

506

Actions upon the Case
FOR
DEEDS,

VIZ.

Contracts, Assumpsits, Deceits, Nuisances,
Trover and Conversion, Delivery of
Goods, and for other
Male-feasance and Mis-feasance.

COLLECTED
Out of the many Great Volumes of LAW
already Extant.

A Learning of very Great and common use
for all degrees of MEN.

With two Alphabetical **INDEXES** for the ready
finding out any thing therein contained.

The second Edition Corrected.

BY WILLIAM ^KSHEPPARD Esq;

LONDON,
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Jacob, and Nicholas Cox, over against Furni-
vals-Inne in Holbourn, MDC LXXV.

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ACTIONS UPON THE

FOR

DEEDS

VIN

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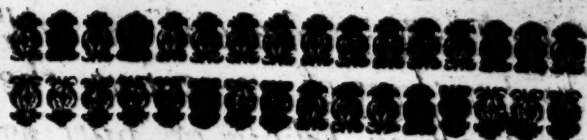
OF THE
COURT OF COMMONS

A




BY

FOR



TO THE
READER:

Judicious, and
Courteous Reader,

OU shall have
herein the per-
formance of the
promise I made
you in my last Piece: The
second part of *Actions upon*
the Case, or a *Methodical*
Collection and Report of the
various and manifold Cases
that this Subject affords in
our

To the Reader.

our Books, wherein you will find nothing of mine, but the method, or labour of putting together, and setting out the grave and learned Judgements, Resolutions and Opinions of the Eminent and Learned Judges, both of former, and present times therein, where perhaps you may find some Repetitions of the same things. For it is confessed, there are some (though not many) things twice or thrice repeated, and yet not without some Variation and Addition: And in truth I must needs say, it is purposely, and (I think) I may say advised-

To the Reader.

visedly done, for these Causes;

1. The Cases and things themselves are very useful and common.

2. They are such as fall as naturally under the one, as under the other head where they lye.

3. The Cases are so manifold and various in the places where these repeated Cases are found, that were it otherwise the Reader might perhaps miss of finding where he seeks them, but now probably he may soon find them in the one or other place where they lye. And the Work, notwithstanding

To the Reader.

*withstanding its many defects,
I doubt not but may prove
useful, if you can cover the
faults, and accept the pains of
him who is yours, and the
Kingdoms Friend,*

Will, Sheppard.

THE



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Actions

690 690 690 690 690

ACTIONS

UPON THE

CASE,

FOR

Contracts, Deceits, Nuisances, &c.

CHAP. I.

Of ACTIONS in General.

SECT. I.



An Action in general is defined what it is to be, a Right of prosecuting is? in Judgment of a thing which is due unto any one; or the lawful demand of ones Right; or the form of a Suit given by Law to recover a thing, Actio quia agitur de injuria, for it is a Complaint of an Injury received.

And so it is either

1. Real, whereby the Demandant claimeth title to have a Freehold in any Lands, or Tenements, Rents, or Commons in Fee-simple, Fee-tail, or for term of Life. The kinds of Actions Real.

2. Personal, whereby a man claimeth Debt, or other Goods and Chattels, or Damages for them, or Damages for wrong done to his person, and is

A

1. Either,

1. Either so personal, that it must be brought by the person himself that hath the wrong, and against the person that doth the wrong, and may not be brought either by, or against either of their Executors, or Administrators: Such are all the Actions that are founded on a wrong done by a man to the person of another, or that for which a man shall recover damages only, as Actions of Trespasse, trespass upon the Case, for doing, not doing, or mis-doing, Debt upon an escape, waste, and Covenant grounded on a personal Agreement, for a thing to be done by the person of the Covenantor, and the like.

2. Or such as doth continue to, and against the Executor and Administrator after the parties are dead.

Mixt.

3. Mixt, wherein not only the thing itself, being a real thing in demand, is to be recovered, but also damages for the wrong, as in an Assize, and the like.

Other divisions may be made of Actions in general, as into Criminal, Civil, Entire, Popular, &c. Cook upon Lit. 53. 284, 285. Croo. 1. 177.

Action upon the Case what it is?

An Action upon the Case is a Writ brought against one for an offence done without force; as for not keeping promise, breaking trust, or the like, And this is called an Action upon the Case, because the whole cause or case, so much as is in the Declaration (save only the time and place) is set down in the Writ: And there no Action is given in the Case, save only in some few Cases, where the Plaintiff hath his Election, to bring this or some other Action; for in most Cases this Action is

is given for remedy against a wrong in a Case where no other Action is to be had.

Sect. II.

This Action upon the Case is sometimes about Defamations, or Slanders, or Injuries done to a man by words spoken, or by words spoken, and deeds pursuing those words together. And sometimes it is about other things, as about deeds done, or not done, or about injurious deeds; and so it is also sometimes about a mans Estate Real, as his House, Land, Office, Franchise, or such like thing: And sometimes it is about his personal Chattel, as his Horse, Cattel, Money, or other such like goods; and sometimes it is about his Person, and so it is either about his Life, or about his Health, or about his Liberty. And sometimes it is about a Suit in Law; and herein the injury is sometimes by doing, sometimes by not doing, sometimes by mis-doing: And in all these wayes it is sometimes by matter of Fraud and Deceit, and sometimes by breach of Trust, and sometimes by Negligence, or Ignorance, or both; and sometimes by breach of Promise, and sometimes otherwise: But more particularly as touching this we are to know, That this Action of the Case is given either,

The kinds of Actions upon the Case.

The kind^s of it.

1. For an Omission, that is, for the not doing of something a man ought to do, called a Non Feasance, which is either,

1. Upon his one undertaking to do it, called Assumpsit, and this is said to be either

1. Express, (i. e.) where a man doth make an express promise to do a thing,

thing, and doth it not at all, or not according to his promise and undertaking.

2. Implied, (i. e.) supplied by, and understood to be in the Case by Law, as where I retain a man to do a work for me; it is implied by Law, that I should pay him for it, albeit I never undertook to do it. And where an Inn-keeper doth entertain a Traveller (as he must do) that the Traveller shall pay for his entertainment, and the like.

2. Or upon the Obligation of Law, without any personal undertaking of his own, either Express or Implicite; as where a Smith refuseth to shoe my Horse, 14 H. 6. 18.

2. For a Commission, (i. e.) the doing of something a man ought not to do at all, called a Feasance, or Male-Feasance, as for disturbing me in my way, Common, Water, or the like profit to be taken by me, or for the Cheating and Deceiving me in a Bargain, for Tearing or Spoiling of my Dred, or for the Rescue of a Prisoner taken at my Suit, or for suffering of him to Escape; or for the keeping of a dangerous Dogg, that he knows is used to bite, or for the keeping of my goods from me, that by some accident he hath gotten into his hands, or the like.

3. For doing something otherwise than a man should do it, called a Mis-Feasance, as where one is to do a work for me, and doth

doth it falsly and deceitfully, as a Smith
doth clep my Horse, or a Taylor spoil my
Garment, or an Inn-keeper suffer my
Goods brought into his Inn to be lost, &c.
Others make the Division of this Action
after this manner.

An Action of the Case is either

1. For doing of wrong to another, and this is

For doing
what a man
should not
do.

1. About his Estate Real, as his House or
Land, called a Nuisance, as where I have a House,
and another by new Building, over-building me,
setting up of Wood-piles, or the like means used,
doth stop up my Light, or deprive me of my
healthy Air: Or sets up a House of Office, Pig-
sty, Lime-kill, or other Noisome or Offensive
thing by me, by which the Air is Corrupted and
Infected to my annoyance in my House.

Private
Nuisances:
To a house
or Land.
In the
Light.
Air.

Or, I have a House, or Land, or the like thing,
to which doth antiently belong Ways, Waters,
or the like Profit to be taken by me, and another
doth by turning, stopping or marring of the ways,
or by corrupting or infecting of the Water, doth
hinder me that I cannot enjoy them, as formerly
I have done: Or if one turn or stop the Stream
of Water antiently belonging to my Mill.

In Ways.
In waters.

Or, I have Land, and another that hath Land
by me stops his Ditch, or doth destroy or pull
down his Banks, by which the Water overflows
and mars my Land.

In a ditch,
or banks.

Or, where another man hindzeth me in my
Common, that I cannot have it, as formerly I
have had it.

In my
Common.

Or, where one shall set up a Tallow-furnace
so near to my House, being an Inn, to annoy me,
and my Guests, or the like; see for these things,

N. B. 83. Co. 9. 47. 14 H. 8. 31. Regist. Orig. 95.
 100. Cro. 1. 237. Co. 10. 139. Leonards Rep.
 239. Dyer 319. Cro. 2. 263. Co. 9. 72. Cro.
 2. 263. Co. 9. 111.

Disturbance in an Office, or Franchise. *Or,* where I have an Office, or a Franchise, and another doth disturb me in it, or the like,
 Co. 9. 57.

Removing of meer stones. *Or,* if one shall remove a meer stone between another mans Land and mine, by which I am damaged, Lib. Intr. 9. C. sect. 1.

Or, my Lessee for years shall hold over his term of my Land, and do waste therein, 21. Ed. 3. 16.

Or, my Tenant of Land, whereof I have the reversion, or remainder shall keep me off from coming to view if any waste be upon it, Cro. 2. 478.

Disturbance in a Chappel. *Or,* where one shall disturb me in my Chappel,
 Cro. 2. 604.

Or, if one take Toll of me, where none is due, F. N. B. 94.

Nuisance in water, and in my Fishing. *Or,* where one shall do any thing to infect and corrupt a River wherein I have a several Fishing, so that the Fish die, Co. 9. 59

Abuse of a Loan. *Or,* it is about his Chattels personal, as where one abuseth my Horse, or other Goods lent or delivered to him, 12. Ed. 4. 13.

Or, where one breaks my Ring of Gold delivered to him to keep, 20. H. 7. 9.

A Carrier loosing or spoiling my goods. *Or,* where a Carrier abuseth, or loseth my Goods he hath undertaken the Carriage of; *Or,* where my Servant, as my Butler, Plowman, Shepherd, hath the charge and trust of any of my Cattel, and shall sell or spoil my Cattel or Goods under his hand:

Or, where I deliver Cloath to one to keep, and he

he makes Garments of it, 2. H. 7. 11.

Dr, where one borroweth my Goods, and then abuseth them, Bulstr. 3 part 94, 95.

Dr, where one hath my Goods pledged, and he keepeth them after I have tendered the Poney, F. N. B. 86.

Dr where Cattel be on my ground damage About a Feasant, and a stranger driveth them out, and Distress. prevent me of my distress. Loan of

Dr, one hath lent me any thing for a time, and takes it away from me within the time. Goods.

Dr, where one distrains my Cows great with Calves, and by the drift of them, or otherwise by that means they lose their Calves, or are hurt.

Dr, where one distrains my beasts of the Plow. Distress

3 Dr, it may arise upon a wrong done to a not di- man both in his Real and Personal Estate at once; strainable. as where a man hath a piece of his House over me, and he lay such a weight upon it, as he breaks down the Roof over me, and spoils my Goods by the fall thereof.

Dr, where one teareth the Seal off a Deed of my Land, &c. Croo. 1. 255.

4. Dr, it may arise for wrong done to the Person, and this either,

1. To our selves, and that either

1. In our Name by Slander.

2. Dr, in our Life, as where one shall threaten and lie in wait to kill or Beat me: Dr where one shall dig a Pit, or lay a Block in the Highway, by which my Horse fall, and I am in danger to be hurt by it, Croo. 2. 446. Coe. 5. 72.

3. In our Liberty, as where one shall lie in wait to take me as his Villain, so that I

Poyson
laid.
Physitian
or Chirur-
gion.

dare not go abroad about my business, or the like, Coo. 7. 1. 9. H. 7. 7. Bendloe 157.
4. In our Health, as where one shall put Poyson in my Meate, and I am hurt thereby. Or, where a Physitian, or Chirurgeon, having me under his Cure, shall Minister to me pernicious Medicines, and hurt me by them, 21. H. 6. 25.

2. To others, and so by consequence to us: As where one shall beat and hurt my Servant, and thereby disable him to do my work: Or, where a Physitian or Chirurgeon that hath my Servant under his Cure, shall disable him by his neglect of him, or by pernicious Medicines and Salves spoil his Body, that he is made unserviceable to me: Or, where one shall threaten my Servants that are upon my work, so that they thereupon desert it, Croo. 2. 567.

Unjust
Suits with-
out Au-
thority.

5. Or, it may arise about Suits in Law, as where a man shall vex me by Suits without cause, or by a Suit in the name of a third Person without his privity or consent, Coo. 7. 4.

Or, shall vex me illegally with his consent, Huttons Rep. 125.

Against an
Attourney.

Or, where an Attourney shall engage in a Suit for me, without any warrant from me so to do, Coo. 7. 4. Croo. 7. 118.

Rescue out
of an Offi-
cers hand.

Or, where one shall Rescue a Defendant, or his Goods, in Prison, or Attached at my Suit, whereby I receive prejudice in the recovery of my Debt, Croo. 2. 241. March. Rep. pl. 76. Croo. 1. 76.

Against a
Sheriff for
a false Re-
turn.

Or, where a Sheriff, or other Officer shall make a false Return of a Writ to my prejudice, Coo. 5. 91 & 7. 1. Croo. 2. 280.

Or,

Q^y, where one shall thrust himself into a Jury, not being returned, and give a Verdict against me, March. Rep. pl. 132. Against a Juror not returned.

Q^y, where an Ecclesiastical Officer shall cite one into that Court without cause, or return one cited thither that is not so, and he be hurt thereby, March. Rep. 196. Croo. 2. 380. Vexatious Suits.

Q^y, where one shall forge a Deed in my name, and give it in evidence against me, 5. Ed. 4. 26. Forgery.
or the like,

2. Q^y it may arise for an Injury by the not doing of something he ought to do, and this either For not doing what a man ought to do.

1. By Law, without his agreement, which is in reference to either

1. His Real Estate of House, and Land, &c. as where a man is to Repair, and keep repaired, a Sea-wall-bank, Hedge, or Pound, to preserve my Land adjacent, and he doth it not by which omission the same is overflowed, or I am otherwise prejudiced, Bulstr. 2 part 280. Reparation of Sea-Banks, Walls, &c.

Q^y, where I present a Clerk to a Church, and the Ordinary refuse to Instruct, or the Arch Deacon to Induct him, Coe. 12. Refusal to institute or induct.
128.

Q^y, where a man is bound by his Tenure to grind at the Lords Mill, and he doth not do it, Bulstr. 1. 295. Tenure to grind at a Mill.

Q^y, where being an Officer, and having a Warrant to do a work, that in such a Case ex Officio he is bound to do, and doth not, Godb. Rep. 54. Officer for neglect of his office.

Q^y, where an Inn-keeper doth not keep my Goods safely in his house, Croo 2. 188. Inn-keeper.

Q^y, where I am Robbed in an Hundred that doth Hundred not pursuing a Thief

doth not hotly pursue and apprehend the Thieves.

2. *Dr.* his Personal Estate in Cattel and Goods, as where I deliver to one my Sheep to keep, and he suffers them to be drowned by neglect or oversight: *Dr.* my Chest to keep, and he suffer it to be spoiled, or lost, 18. Ed. 4. 27.

Dr. where one Buys a Thing of me, and suffers it to lie a charge upon me, and doth not take it away.

3. *Dr.* in reference to Suits in Law. As where my Attourney retained by me to follow a Cause shall neglect it, and not do his duty in it, Huttons Rep. 125.

Dr. where a Sheriff shall not Execute a Process at my Suit when he may, Croo. 2 532.

Dr. where a Sheriff shall not Return his Writ when he hath Executed it, Croo. 1. 216.

Dr. shall not keep his Prisoner safe, but suffer him to escape, Croo. 1. 240. so of another Officer.

2. For not doing what a man hath agreed and assumed by his promise to do, the which also doth sometimes relate,

1. To a mans Real Estate. As where one promiseth to buy Land for me, and doth it or buyeth it for himself: *Dr.* promise to make me an Estate of Land, or to Build me an House, or the like, and doth it not.

2. To his Personal Estate. As where one doth promise to pay me my Money, cure my Horse, bying me in so much Corn to such a place, or the like, and doth it not.

3. To

Neglect of
an Attour-
ney.

Of a
Sheriff.

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and
happ
med
it to
off,

and
both

As
to
do

as
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1.

3. To his Person. As where a Whisitian or Phisitian, Chirurgeon doth promise to Cure a Sick or Wounded person, and doth it not according to promise, Bulstr. 2. 333.

Phisitian,
Chirurgi-
on.

Q, where I am a Traveller, and in my Jour- Inn-keep-
ney, and an Inn-keeper refuse to entertain me. er.

4. To Suits in Law. As where a man that is an Attourney doth promise to recover such a Debt for me, and doth it not, or the like.

3. For an Injury by the not doing of a thing well, or doing it amiss, which a man is bound by Law, or his own promise to do, which also hath reference to

3. For mis-
doing what
a man
should do.

1. A Mans Real Estate of House, Land, &c. A House
As where a man undertaketh to Build me a built a-
House in one form, and doth it in another. miss.

Q, where one keepeth his own Fire so care- Fire ill
lessly, that my House is Burnt by his neg- kept.
lect, 2. H. 4. 18. 8. Ed. 4. 19.

2. A Mans Personal Estate of Goods and Cat-
tel. As where I put my Horse, or Sheep, to
one to be kept, and he keep them so carelessly,
that I lose them, or they be spoiled by his
neglect, Co. 5. 13. 12. Ed. 4. 13.

Q, where I lend one a Horse, and he by care- Things
lessness suffer him to be hurt, and lost, Doct. lent abu-
and Stud. 29. 2. H. 7. 12. sed.

Q, where a Taylor takes upon him to make
me a Garment, and by ignorance or neglect
spoil it.

Q, any Servant of mine that hath any charge Servants
of my Goods or Cattel, shall suffer them by carelets of
neglect to be spoiled. their Ma-
sters

Q, where I lend my Horse to Ride so far, and
he Ride farther with him. goods.

Q,

Common
Carrier.

Plowing
of Land.

Barber.

Attourney
Escape.

Officer.

4. For
fraud or
breach of
trust.

Or, where a Common Carrier by neglect suffers his Carriage to be lost or spoiled.

Or, where one taketh my Land to Plow, and doth it at in an unseasonable time, 21. H. 7. 41. Croo. 2. 339. Hob. pl. 17, 18.

Or, where a Farrier taketh upon him the Cure of my Horse, and doth use contrary and dangerous Medicines, and hurt him, 19. H. 6. 47. 3. His Person. As where a Barber doth undertake to Barb me, and doth it with an unwholesome Razor.

Or, where a Chirurgion or Physitian undertaketh the Cure of such a Disease or Wound, and doth apply unwholesome Medicines, or Salves, or is otherwise notoriously negligent about it, Bufr. 2. 232, 233.

4. To Suits in Law. As where an Attourney is retained by me, to Sue in such a way: And he doth it in another of his own head, or doth it deceitfully,

Or, a Sheriff having Arrested a Man at my Suit, suffer him to escape, Brownlows Rep. 12. 21. H. 7. 41. N. B. 145. G

Or, where a Bayliff shall Attach a Mans goods at another Mans Suit, and then deliver them back to the Defendant again.

Or, where any Ministerial Officer of Justice shall make a false Return, or do any other part of his Office falsely, 9. H. 6. 60.

In the next place this Action is given to a man,

4. For an Injury done by breach of trust, or by some Fraud or Deceit used, which is sometimes in a Mans Real Estate, and sometimes in his Personal. As where one shall Personate me in a Court of Justice, or else where, and do any thing in

in my Name to my hurt, March. pl. 76.

Or, where my Councelloz or Attourney shall discover my Counsell; or otherwise break their Trust in my Business, 11. H. 6. 13.

Or, where I retain one to buy a Lease of Land for me, and he buyeth it for himself, 20. H. 6. 4. 25. 3. H. 7. 14.

Or, where one shall Forge a Deed or Statute in my Name, and make use of it against me, 51. Ed. 4. 126.

Forgery.

Or, where one subtilly makes me pay Money that I have paid before, Croo. 1. 100.

Or, where one sells Land or Goods to another, and then sells it to me, F. N. B. 99.

Or, where my Servant that hath the custody and care of any Cartel or Goods of mine, will, Sell, or Abuse them, or Neglect their care, and suffers them to be spoiled, or lost, 27. H. 8. 25. 12. Ed. 4. 13.

Or, where I trust one to do any Work or Business for me, and he doth it deceitfully, 11. H. 6. 18.

Or, when my Servant or other shall get Money of mine out of anothers hands by a counterfeit Letter, Croo. 2. 223.

Or, where I retain one to take a Bond for me, and he takes it for himself, 3. H. 7. 14. 17. 26. H. 6. 4. 25.

Or, where one cheats me at play by false Dice.

False dice.

Or, where one shall Act as an Executor that is none, to the prejudice of the true Executor.

Or, where one doth Deceive me in or about a Bargain, Croo. 2. 387.

Or, where one doth Sell me a Sapphire for a Diamond, and warrants it so, Croo. 2. 419.

In a Sail with warranty.

Or, where one doth Sell me a Horse, and warrants

rant

rant him sound, and he is not so, 11 H. 6. 22.
Owens Rep. 60.

Without Warranty. D^r, where I trust one to do any work for me, and he doth it falsly and deceitfully, Lanes Rep. 65. Croo. 2. 266.

Where one shall sell Wine mixed with Water; or corrupt Victuals, knowing them to be such.

D^r, where one shall sell a Horse, Cloth, or any thing for Good, that he knows to be Fought, or for True, that he knows to be Counterfeit, Croo. 2. 470.

Deceitful Sales. D^r, where one Sells, and is to deliver that which is Good of Wares, or any Commodities, and delivers that which is Fought for Good, Dyer 75. 2 H. 7. 91. Croo. 4. 18. 13. H. 4. 2.

D^r, where one sell a Horse, or other Goods, as his own, that is not of his own, Croo. 2. 197.

By a Clothier. D^r, where a Clothiers Cloth, and mark of his Cloth is in request, and another Clothier shall Counterfeit it upon deceitful Cloth, to advance his own Cloth, or the like, Croo. 2. 168.

D^r in the last place, this Action is given.

Sect. III.

5. For a Trover and Conversion:

5. To reliebe a man against an Injury done to him by another, in the keeping away of his Cattel or Goods from him, &c.

As where a man happeneth to get the possession of Goods, or Cattel of mine, by finding, or the delivery of another, or of my self, or by the Sale of them: by one that had no right to them, or otherwise; and he that hath the possession of them, hath neither right of Propriety, nor right of Possession in them, and he doth convey or deliver them over to another, or waste or consume them, or after

ter Demand, refuse to deliver them to me, and converts them to his own use, Dyer 306. Co. 2. 25. & 5 27.

By all which we may perceive, that this Action doth sometimes arise upon, and is conversant about a Contract, Covenant, or Agreement. And sometimes doth arise upon, and is conversant about other things, as upon or about a Balance done to a man in his Way, Light, Common, Office, Franchise, or the like. And sometimes doth arise upon, and is conversant about some matter of deceit, and fraud, without a Contract. And sometimes about some matter of breach of Trust, without an Agreement or Covenant. And sometimes about some matter of Trover, and Conversion of Goods. And sometimes about Delivery of Goods to another, without any Contract or Agreement in the Case. And sometimes about Suits in Law. And sometimes about a remedy against a Hundred for a Robbery committed within it. And sometimes about some other doing, not doing, or mis-doing in other Cases, as will more largely appear in the particulars following.

As to the first kind of Action of the Case, for Slanderous words, or Defamations, and Deeds pursuing such words, that are, or may be injurious to the Name, or Credit; this is that which we have dispatcht in our former Treatise under the title of Actions of the Case for Words, a Conspiracy or Libel. And now our next work is to open the Law touching other Actions upon the Case about Deeds; wherein we shall observe this Order.

1. We shall lay down some general things about all kinds of Actions whatsoever.

2. And then we shall lay down some general things

things about all kinds of Actions upon the Case whatsoever.

3. And lastly, shall descend to the particular kinds of Actions upon the Case; as of an Action upon the Case about a Contract, about a Rulance, about a Breach of Trust, about a Deceit, about Suits in Law, about Trover and Conversion, against a Hundred, about a Robbery done, about Pale-sealance, Non-sealance, Pil-sealance, in other things. And then we shall add a word or two about the Pleavings in these Actions.

C H A P. II.

Some General Things about all kinds of Actions whatsoever.

As to all kinds of Actions in general, these things are to be known,

1. That in every Action, and the proceeding thereupon, three things are to be done. 1. The Cause, or Matter of Fact must be shewed; and this the Party must do. 2. The Law must be shewed, and Judgment given according to the Law, upon the Matter of Fact appearing in the Case; and this the Judges must do. 3. The Judgment given by the Judges, must be Executed; and this the proper Officers appointed for the doing thereof must do, Plow. 36.

2. In every Action, he that brings it must look to these things. 1. That he be a Person able to sue, and not disabled by Law; for an Out-lawed Person, an Excommunicate Person, a Villain, an Alien born, one that is Attaint in a Premunire,

Persons disabled to sue, Out-lawed person, Excommunicate person, Villain, Alien born Attaint in a Premunire.

munire, a man that is entred into, and professed
in any order of Religion, one that is attainted of
Treason, of Felony, a Convict Recusant, or ab-
jured the Realm, or a Feme Covert without her
Husband cannot sue. Lit. Sect. 196. Coe. upon
Lit. 135. And yet here we must understand, that
this Disability is only for that time whiles the
Cause remains. For when the Attainder of Fel-
lony, or Treason, or in a Premunure is off, by
Reversal, Wardon, or otherwise; or Commu-
nication is over, by Absolution, and the like, then
they may sue as another man may do.

Recusants
convict
Abjured
person.

3. That this Disability doth extend only to
Suits in their own Right. For as Executors, or
Administrators in the Right of the Testator, they
may sue whiles his Disability doth continue.
Lit. Sect. 199. 200. Dyer 375. 377. 227. F. N. B.
28. Coe. 8. 68. But Idiots, Mad-men, such as
be Deaf and Dumb, or any other Person, Woman,
or Child, except such Disabled Persons as afore-
said, may bring any Action upon the Case, or o-
ther Action. And herein also it is further to be
known, that wheresoever a Defendant in any
Action shall desire to take Advantage of such Dis-
abled Persons Suit, he must do it at the beginning
of the Suit, before he make any Answer, or
Plead any other Plea to the Action, See the
Books before.

Idiots,
Mad-men,
Deaf and
Dumb men
Children.

3. That in every Action the labour of proving
must rest upon the Actor, Coe. 4. 75.

4. That hanging a Suit nothing may be in-
novated, Coe. upon Lit. 344.

5. That he that hath once renounced his Suit,
can no more revive it; and therefore a Retraxit
in this Action, is a Bar to all other of the like, or

Retraxit.

of an inferiour Nature, Cro. upon Lit. 139.

Recovery
in one Bar
in another
Action.

6. That a Recovery in one Action, is a Bar to all other Actions touching the same thing, where the Demand and Recovery is of a thing certain. And one man is not to Sue another man again for that wrong for the which he hath recovered a Recompence against him in another Action. But where the thing Demanded, and Recovered, is Uncertain, there it is otherwise, Stiles Rep. 4. Yelvertons Rep. 67, 68.

Bar to this
Action.

7. That where a man hath recovered the same thing in kind, or a Recompence for it of one man, he may not afterwards Sue another man for it, to Recover it again, Yelverton 67, 68. 14 H. 4. 22. 7 H. 4. 30.

Pleading.

Rescue of
a Person
Arrested.

8. That when in an Action it shall appear by the Plaintiffs own shewing, that he hath no cause of Action, or that he hath brought his Action before the Cause of Action was given to him, it must needs pass against him. And yet if a man taken in Execution by the Sheriffs Warrant, be Rescued from his Bayliffs, the Sheriff may Sue the Rescuers before he himself be Sued for the Escape, Croo. 1. part last publisht 53. Croo. 2. 70. Yelverton 70, 71.

False A-
ction.

9. That a man shall not be otherwise punished in any Case for the bringing of a false Action in a proper Court, than by the payment of the Costs given in the Action in the same Court, Yelvertons Rep. 117.

10. That by a special Custome an Action may lie in some Cases, in which at the Common Law no Action will lie, Stiles Regist. 9.

11. That if one be barred by Plea to the Writ, he may have the same Writ again. If by Plea
to

to the Action of the Writ, he may have his Right Bar in one, Action. If the Plea be to the Action, and he be is a Bar in another barred by Judgment upon Demurrer, Confession, Action. or Verdict, in a Personal Action, it is a bar for ever. If in a Real Action, he is put to a Writ of a higher Nature, Co. 5. 7.

12. That a violent Intendment may bring a man within the compass of an Action, M. 23. Car. 1. B. R. by Roll. Ch. Justice.

13. That in some Cases a man may sue at Common Law, for that which he may sue in the Spiritual Court, Stiles Regist. 9. Mich. 23. Car. 1. B. R. Spiritual Court.

14. That the Kings Patent will not give the Patentee an Action, which the Common Law doth not Allow of and Warrant, Stiles Regist. 9.

CHAP. III.

Some general things only, or most properly Applicable to Actions upon the Case.

Sect. I.

AS to all kinds of Actions of the Case in General, these things are to be known.

1. That to ground this Action upon the Case, there must appear to be in the Case some Malice in the Party that doth the Wrong, and some Damage to the Party, to whom the Wrong is done. For if there be Malice, and no Damage done by it, there can be nothing Recovered, so the Action will be vain, and to no purpose; and if there be Damnum sine Injuria, Damage and no Malice, it is not Punishable by Law. And yet this is here to be observed, that albeit Damage without Malice, Malice and Damage must be in every Action.

Malice, nor Malice without Damage can raise an Action, yet Malice may make the wrong greater, and where it is actionable aggravate the Damages, Stiles Regist. 3. 4. 5. And all Cases where there is in the Case Damnum and Injuria both, there for this he may have this Action at the Common Law, Co. 10. 72. 76. Bullstr. 2. 265.

This Action given where is note other.

2. It is said in some of the Books, that a man shall never have this Action upon the Case, where he may have any other Remedy by any Writ founded in the Register. And that this is given only in such Cases where there wants such a Remedy, Cro. 1. last published 520. But it is said in very many Books, and agreed in very many Cases: That this special Action of the Case will lie in very many Cases, wherein there is another Remedy by a formed Action in the Register. And so the frequent practice is at this day, Co. 4. 92. in Slades Case. F. N. B. 24. Cro. 1. last published 520. Co. 4. 94.

It must be brought in the Life time of the parties.

3. That this Action of the Case for a thing done by a Male-Feasance, or for a Nuisance, Deceit, false Return of a Writ, Escape, Rescous, and the like, must be brought in the Life time of him that doth, and of him that suffereth the wrong. The Rule being for all Actions Personal. That they die with the Person, and therefore they will not lie for, nor against an Executor, or Administrator. But an Assumpsit without an Especialty is no more Personal than a Covenant by Especialty; and therefore this dieth not with the Person, Co. 4. 92. and 86.

Vi & armis.

4. That some of these Actions of the Case may be said Vi & armis, Cro. 1. 236.

Seck

Sec. II.

For the Persons that may Sue in this Action, take these things.

1. That all Persons, but such as are before mentioned to be Disabled, may Sue, the Plaintiff by Procheinamy, the rest in Person.

2. Regularly the Husband must join with the Wife, and he cannot Sue in her own Name without him in any Case, 27 H. 8. 24.

The Husband and Wife may join in a Suit upon an Assumpfit made to the Wife Dam sola fuit, Hill. 9. Jac. B. R. Wolvertons Case.

The Husband alone may Sue upon an Assumpfit made to the Wife, and likewise as upon an Assumpfit made to himself, 27 H. 8. 24, 25.

If the Husband make a Lease for Years of his Wives Land, and the Lessee do Burn the House, it is doubted whether the Husband alone may bring this Action without the Wife, and therefore safe to join her with him, Croo. 1. last published 46 r.

In case of Delivery of Goods by them, and upon an Assumpfit made to the Wife, and so generally in all Cases (as some say) where in the Action nothing but Damages is to be Recovered, and the Husband alone may Release, there he alone may bring the Action. If it is most safe to join her with him, Croo. 1. 316.

3. So being a Dutch man, and his Parents Subjects to the King, brought his Action against a Customer, for not putting Cocket upon Merchandises, and reverting the Customs. It was said, that it was not so for the Dutch men, not of our Congregation, nor Free of any Company of Merchants, By Cook Ch. Justice, Pasche 14 Jac. Stephens Case.

Who is to Sue in this Action upon the Case, and for whom it lieth. For Husband and Wife. In an Assumpfit.

For Misfeasance.

Assumpfit.

By a Dutch man.

● Assumpsit
to two, or
more,

If a Promise be made to two, or more, no one of them may sue whilst the rest live; But after the Death of any, the Survivors may sue, Brownl. 2 part 99. Coe, upon Lit. 297. But two or more may not sue in one Action for several Causes, though of the same kind, Coe. upon Lit. 195. Croo. 2. 647. So they cannot joyn in a Suit for Slander, Dyer 19.

For an
Executor,
or Admin-
istrator.

The Executor, or Administrator may bring this Action in many Cases. As against the Lessee for putting him out of his Term, N. B. 93. G. Coe. 4. 95. Regist. 97. Upon a Trover and Conversion, and for a Conversion in the Life time of the Testator, Croo. 1. 159. and 1. last published 377. So for Money for Corn sold, Lib. Intr. 4. B. Sect. 2. Upon an Escape in the Testators time, Bulstr. 3. 112. Upon an Assumpsit to the Testator to Pay 20 l. Lib. Intr. 10. Sect. 5. B. Upon an Assumpsit to save the Testator harmless from an Obligation, Lib. Intr. 12. B. Sect. 2.

If there be more Executors, or Administrators than one, and a special Promise be made to one of them about any thing referring to the Executorship; in this Case happily he alone may sue. But in all other Cases they must joyn. And the safe way in case of a Promise to one, is to sue in all their Names, as may be done, Croo. 1. last published 315. See Hobb. pl. 229. chap. 4.

SECT. III.

3. Who is
to be Su-
ed, and a-
gainst
whom this
Action
may be
brought.

For the second thing, the Persons against whom this Action lieth, or may be brought, take these things.

1. This Action will lie against Ideots, Madmen,

men, Infants, Persons Deaf and Dumb, or any other Man, Woman, or Child: But if an Infant be Sued, he must defend by his Guardian, all other do it in person.

2. The Wife cannot be Sued alone without her Husband: for any thing that she hath done, as he may in some Cases be for what he hath done. And where they are both Sued together, albeit he may in some Cases answer without her, yet she may in no Case answer without him, 34 H. 6. 29. Lanes Rep. 66, 67.

Against
Husband
and Wife.

This Action will lie against Husband and Wife, for not Repairing the Sea-harks upon the Wives Land, 7 H. 4. 31.

It will lie against the Husband for Cloaths bought by her self for her use; and for Merchandizes to make Cloaths, albeit the Contract be made without the command, or privity of her Husband, Bowl. and Goldsb. 47.

Upon a
bargain.

Where the Wife shall make a promise for the Husband, that is binding to him, the husband not the Wife (who is but an Instrument) must be sued upon it, Stiles Regist. 6. Mich. 22. Car. 1. R. B.

3. This Action will lie, and may be brought against an Executor, or Administrator, upon the Assumpsit of the Testator; and for any thing by way of Contract, and where the Testator doth deliver Goods to another, and he die, and the like, Lib. Intr. 4. C. Sect. 3. Croo. 1. 92; Cob. upon Lit. 53. Dyer 114. Yelverton 89. Coa. 9. 87. Plow 182. And this without Averment of Assets in the Declaration, Croo. 1. last published 59. 91.

Against an
Executor,
or Admi-
nistrato-
tor, upon
an Assum-
psit.
Averment
of Assets.

But this Action will not lie against an Executor, or an Administrator for a personal Will-
sance; such as this, where it was in the Testator;

as where he is Sheriff, or Keeper of a Prison, and suffer an Escape, or deal falsely in his Office; by a false Return, or not Return of a Writ, or the like, Dyer 322.

And yet it will lie against the Executors of a Sheriff, that hath levied Money upon an Execution at my Suit. For this is not like to a personal Dil-seizance, which moritur cum persona; And in cases where he is chargeable for levying of Money, and not paying it over; this is such a thing, as wherewith his Executors, as well as himself are chargeable. Croo. 1. 387. 216. 370. Plow 37.

Personal
Contract.
C. 100. 11
21. 12. 13.

It is said, it will not lie upon a promise of their Testator, to pay Money in Marriage, or as a Marriage-portion, a sum of Money in consideration of a Marriage. And so it hath been formerly adjudged, Croo. 1. last publisht 454. But it seems the contrary hath been since adjudged; and is now agreed to be the Law, Croo. 2. 404. 418.

It is said, it will not lie against the Executor, or Administrator of one that is a Lessor, and hath covenanted for himself only to pay quit Rents, during a Term. Croo. 2. 87. Yelverton 89. Herlakendens Case M. 2. Jac. agree p. 1. Curiam.

If an Infant be an Executor, and prove the Will, and a Friend sell some of the Goods for the Infant, he may not for this be sued as an Executor. Croo. 1. last publisht 254. See more of this chap. 4. Croo. 2. 404. 405. and Croo. 3. last publisht 314. 315.

Against
the Master
upon the
Contract.
of his Ser-
vant.

4. It may lie against the Master upon the Sale and Warranty of his Servant, 11 Ed. 4. 6. And where the Servant shall make a promise for the Master, the Action must be brought against the Master,

Master, and not against the Servant. Stiles Regist. 6.

It will lie against the Master of a Carrier upon the Receipt of Goods by the Servant, Pachtie 9. Jac. B. R. Worral and Bradshaw.

5. If a Smith that hath my Horse, and lend him to another, and he murther him, I may have my Action against the Lender, 12 Ed. 4. 15.

If a man undertake to Cure one of a Disease, and he bid his Servant, he shall not Cure me; I must have my Action against the Master, and not against the Servant, 11 Ed. 4. 6, 7.

6. Where two or more join in an Assumpsit, the Action must be brought against them all, whilst they are alive. But after the death of any one of them, it may be brought against the Survivors or Survivor of them, or against the Executors or Administrators of the last Survivor of them, Bacon 2 part 207. Co. upon Lit. 331. Trin. 7 Jac. B. R. Breerton and his Wife, and King and Master.

And where the Action is to be jointly and some of the persons are, and some of them are not known to the Plaintiff, he may bring his Action against them that are known by name, and in alius, for the rest not known, Stiles Regist. 8. Pachtie 23. Car. 1. B. R.

The Plaintiff may not sue several Defendants in one Writ in Actions of the same Nature, Co. upon Lit. 331.

If two sue me in the Admiralty for a Thing done in Corpore Comitatus. I may for this bring my Action against them severally, Dyer 159.

Sect. IV.

For the opening of this, these things are to be known.

1. That

Against others for Misfeasance.

Physician Deceit.

Assumpsit by two or more.

Declaration against some Defendants by name, simulcum alius, &c.

4. What Action the Plaintiff may have, and what not, and where he may have an Action of the Case, or some other Action.

1. That one may have remedy by several Actions for one and the same wrong, *Lanes Repl. 57.*

2. That one may in many Cases have Remedy by this Action upon the Case for a wrong, or he may have some other Action at his choice, *Stiles Rep. 164. 342. Croo. 1. 63.*

Upon Bailment of Goods.

3. That upon the Bailment, and Detainment, Abuse, or Loss of Goods, the party grieved may have this, or some other Action, *18 Ed. 4. 23. 12 Ed. 4. 8. Stiles Regist. 6. Dyer 121. 21 Ed. 4. 67.*

Upon an Infimus computaverunt.

4. That upon an Infimus computaverunt, the Party to the promise is made, may either have an Action of Debt, or this Action at his choice, *Stiles Regist. 7.*

Upon a Nuisance.

5. It is said, that if I be seized in Fee of Land adjoining to the River, and one that is seized in Fee of the River, doth stop up the Water, and cause it to drown my Land, that my proper remedy in this Case is by Assize, or Quod permittat, *Croo. 1. last publisht 520.*

Upon a Trespass.

6. That if I take a mans Goods from him, and keep them till he pay me 10 l, he may not have this Action for this, but Trespass, *Lanes Rep. 68. 18 Ed. 4. 23.*

Upon a false Imprisonment.

7. That if one Arrest me without a Warrant, I may have (for this wrong) remedy by this Action, or an Action of Trespass, *Lanes Rep. 68. 18 Ed. 4. 23.*

Upon the ouster of a Lessee by the Lessor.

8. That where the Lessee, or his Executor is ousted of his Land by the Lessor; he may have his remedy by this Action, or an Action of Trespass, *18 Ed. 4. 23. Lanes Rep. 68.*

Upon a Contract.

9. That if my Servant buy Goods for me, and give a Note of the Receipt of them to my use, and

promise the Money at the day, this Action, not Debt, must lie for it, Dyer 230.

10. That if I buy Corn of a man, to be delivered at such a time and place, and he fail me, whereby I am forced to buy elsewhere, I may have for this wrong, this Action, or a Detinue, Dyer 22.

11. That if a Sheriff have one in Execution for my Debt, and suffer him to escape, I may have against him this Action, or an Action of Debt, Co. 4. 92. Upon an Escape in a Sheriff.

12. That if a Stranger give my Cattel on another mans ground, to the end that he may distrain them Damage-feasant, I may have this Action, or another at my choice, Lanes Rep. 67, 68. 9 Ed. 4. 4. Upon a chasing of Cattel.

13. That if a Miller will not suffer me to grind Toll-free, but by force take Toll from me, where none is due; this Action, or some other will lie for it, 42 Ed. 3. 24. Action 31. So if the Toll of such a Fair be mine, and another disturb me, and set up a Toll-Booth there: Or an Officer shall force Toll from me, that ought to be quit of Toll; I may either have this, or some other Action, Co. 4. 94, Cro. 2. part 122, 123. About Toll against a Miller.

14. If one retain me, being a Taylor, to make Cloaths for him, and put me to buy Cloth, I may have this Action of the Case, or Debt, for my Money, Cro. Rep. 2. 626. For a Taylor for making of Cloaths.

15. That if I being Bayliff of a Hundred, and prescribe to have of every Brewer in the Hundred three Gallons of his best Ale for 7. d. and be disturbed in it; I may have this Action for it. But it is doubted what other Action I can have, Trin. 19. R. 2. Action, &c. 51. About a Franchise.

16. That

16. That if one grant me yearly for my life Hay and Straw in his House for two Hens, and I am seized and disseized of it; I may have this Action, but can have none other, 4 Ed. 4. 2. Action, Sec. 17. What Action shall be had for a Nuisance, See in Nuisance chap. 5. Croo. 1. last published 428. Stiles 3.

Upon
Contract
for Release
of Land
about
Charters.
About
Timber
trees.
About an
Arbitre-
ment.
Upon an
Executo-
ry Con-
tract.

17. That this Action will lie upon a Contract for a Term of Years of Land, or upon a Lease Parcel. So about Charters and Writings of Land. So upon a Contract about Timber-trees growing on the Land.

18. That for a Debt certain referred to Arbitrement amongst other things; this Action may lie upon the Arbitrement, Stiles Regist. 7.

19. That Cases of a Contract, wherein is a Sale, if there be any thing in the Contract Executory, and to be done, as to pay any part of the price for the thing sold, or to deliver any part of that which is sold, or the like, there is use of this Action.

For a Tres-
pass, or De-
tinue of
my Goods.

20. That it is held by some, that in most Cases where a man hath taken my Goods into his possession, as a Trespass, or that Trespass lieth for the wrong; or where he hath my Goods in that nature, that I may have a Detinue for them; that if I will, I may demand the things; and if the Party refuse to deliver them, that there be a Conversion in the Case; I may have this Special Action of the Case, or the other Action at my choice, So held. B. R. Mich. 22. Car. B. R. And he may have either a Detinue, or an Action of the Case at his Election, Stiles Regist. 7. Croo. 1. last published 781. Dyer 22. Croo. 1. 63.

Debt.

21. That an Action of the Case will not lie for

for Arrearages of Rent upon a Lease for Years, Arrearages of Rent.
for an Action of Debt lieth properly in the Case.
Stiles Regist. 7.

22. That this Action will not lie upon a Contract which sounds in the Realty. But Quere, if it be mixed with other Matters which are not in the Realty, whether it will lie or no. Stiles Regist. 9.

23. That where one binds himself to pay Money Yearly, or Quarterly, at several Days, no Debt. Money to be paid at several dys.
Debt will lie upon the Contract till all the days be past. But an Action of the Case will. And therefore if one Contract with me to pay me 10. l. a Year for four Years, in this Case upon every failure, an Action of the Case may be had. But an Action of Debt will not lie till all the days be past, Co. 3. 22. H. 6. 18. Co. 4. 94. Dyer 113. Bro. 108.

So if one agree with me, to give me every Year during my Life Twenty Bushels of Corn; or a sum of Money is given in Marriage to be paid at several days, Co. 4. 94.

24. In Trin. 84 Jac. B. R. Cullimore and Eginton. It was held, That in every Action of Debt, an Action of the Case is implied. And when it appears how the Debt grew due, then it is a good Assumpsit. Yet see Co. 11. 89. So when one hath Goods, by which he is Chargeable to me in a Detinue; I may have this, or an Action of the Case, Co. 1. last published 781. Dyer 22.

Action upon the Case implied in every Contract.

SECT. V.

For the opening of this question, take these things.

5. Where two Causes may be in one Action, or not.

1. That where there are two several damages done to the Party, he ought to have two several Actions, and not to joyn them in one Action, Stiles Regist.

Regist. 5. And yet it was adjudged in B. R. That one may joyn two Debts due upon several Obligations, or other Personal Actions in one Action, Stiles Regist. 10.

2. That one Action of the Case may be brought for divers Assumpsits. But if the Causes and Wrongs be of divers Natures, as Debt, Trespass, and the like, albeit they be against one person, yet they cannot be joyned together in one Action, Co. 8. 87. 3 H. 4. 13. 11 H. 6. 18. Croo. 1. 14.

3. That if the Defendant be charged by one and the same Writ for one thing as Executor upon the Contract of the Testator; and for other things of his own buying, and declares that upon account the Defendant was found Indebted in these sums, and promises him payment; this is not good in one Action, for the Defendant is to be charged two manner of ways, Hobb. Rep. pl. 115. And yet See Hobb. Rep. pl. 8. Where an Action of the Case was brought for Slander about Murder, and for a Conspiracy to take away his Life for it, and both in one Writ, and allowed in a Writ of Error.

4. That albeit in Actions Real a man cannot put two Causes in one Action, yet in Personal Actions one may comprehend several Wrongs and Causes of Action, &c. Co. 8. 86. But an Assumpsit of the Testator for his Debt, and an Assumpsit of the Executor for his own proper Debt may not be joyned in one Action against the Executor, Hobb. 88. Jenkins Century 7. Case 49. See more of this, Yelverton 93, 94.

Sect. VI.

A Contract cannot in any Case be apportioned, but either the thing agreed for must be all paid, or all lost; as if a Lease Parol be made yielding Rent, and the Lessor enter upon a part of the Land, the whole Rent is suspended. And so if a stranger enter upon part by Title Paramount, 9. Ed. 4. 1. Brook. 52. So if the Husband sell part of the Trees upon his Wives Land for Money, and the Wendes take part of them; and before he hath taken the rest, he die, yet the Wendes must pay all the Money. But if a day be set to cut them, and not before, and he die before the day, then if he had Cut part of the Trees, he should not have paid any of the Money, 18 Ed. 4. 6. Brook. Contract. 26.

If one make a Lease for Years, and sell Goods all by one Contract for an entire sum of Money, and the Goods be took away from him before the Money be paid, yet the whole Money must be paid. So if one sell two Horses for Ten pound, and one of them is another mans, and he take it away, yet the whole Ten pound must be paid; but he shall have his Counter-remedy against the Seller, 7 H. 7. 4. Brook. sect. 52. 135. 12. H. 8. 13. 9 Ed. 4. 1. So if a Contract be about Money partly usuriously lent, and partly not; the Contract is void for all, 38 H. 6. 28.

Sect. VII.

As to this, within what time this Action must be brought, these things are to be known.

1. That all Actions upon the Case (other than

6. Where a Contract may be divided, or not.

7. Within what time an Action upon the Case must be brought.

for Slander) must be brought within six Years after the Cause thereof accrued, if the Plaintiff be then of full age; otherwise, *Compos mentis*, out of Prison, or Liberty, against England; or otherwise within six Years after the Impediment removed. And for Slanderous words it is to be brought within two Years after the Cause, or Impediment removed, Stat. 21. Jac. chap. 16.

For the understanding of which Statute, and knowledge of what concerns this Point, as to these kind of Actions; we are to know,

1. That words spoken to the Slander of a man's Title to his Land, and not of his Person are not within the Statute.

2. That if Judgment be given, or Arrested, or the Defendant outlawed, and the Outlawry reversed in a former Action, a new Action may be brought within a Year after the Reversal, Arrest of Judgment, or Outlawry, Croo. 1. part 114.

3. That where a man is Barred in Law by lapse of time, he is Barred in Equity also. In March. Rep. pl. 207.

4. That the Years must be accounted from the time that the cause of Action is complete, as when it is upon a promise, to time of the breach of the promise, Croo. Rep. 1. 81. 98. And the account shall be made from thence to the Telle of the Original, Croo. 1. part 114.

5. That if the Plaintiff set forth in his Action, that the cause of Action was beyond the time named in the Statute, then the Action will go against him upon his own shewing. And if the Contract be said to be within the time, and by the evidence it shall appear to be without the time, then the evidence will not maintain the Action, and so

it

it must go against the Plaintiff also, Croo. Rep. 1. 81. 98.

6. That the Defendant may take advantage of this, without pleading of the Statute, and without Demurrer, Croo. Rep. 1. 116, 117.

7. That if the Defendant in the Suit do not take exception at the Action brought, or plead the Statute, the Action will go against him, however it be laid by the Plaintiff, Croo. Rep. 1. 277, 292.

8. That if one take out a Latitat within the time limited, it is a good bringing of the Action within the time, and he is not Barred by the Statute, albeit he do not declare within the time limited by Statute against the Party, Stiles Regist. 10.

2. That an Action of the Case (which is a Personal Action) must be brought in the Life time of him that doth, and of him that suffereth the wrong, unless it be in Case of a Contract, and upon an Assumpsit, Coo. upon Lit. 53.

3. That upon an Assumpsit brought after six Years after the Promise and Breach, moved in Arrest, &c. two Judges were against two, that the Statute must be pleaded or demurred unto, or no advantage can be taken of it Croo. 1. 116. See also this more in Croo. 1. 81. 68. 116. 243. 245. 254. 255. Herley Rep. 138. 148. Huttons Rep. 106.

Sect. VIII.

1. A Transitory Action may be laid in any County at the will of the Plaintiff, yet generally it is (and so in reason ought to be) laid in the County where the Cause of Action did first arise, Mich. 22. Car. B. R. Stiles Regist. 6. Coo. upon Lit. 282.

8. Where it must be laid.

But

But an Action brought against a Constable for a thing done by him by vertue of his Office, ought by the Statute to be brought against him in the County where he is Constable, and not elsewhere, 21 Car. B. R. Stiles Regist. 6. But generally all Actions shall be laid where the Cause of Action appeareth to rise, Hobb. Rep. pl. 224.

2. Transitory Actions may be brought within Corporations, for their Priviledges do properly and only extend for the Trial of such Actions, the Causes whereof do arise in their Jurisdiction, Mich. 22. Car. 1. B. R. Stiles Regist. 6.

3. Where matter in one County depends upon matter in another, the Plaintiff may chuse his County, if it be not in Cases where the Defendant upon the general Issue pleaded, may be prejudiced in his Trial; as to conspire in one County, and indict in another. Election of the Action to be brought in either, but if he be Indicted, but not by them; there it shall be brought where the Conspiracy was. If Menace be made in E. where by my Tenants depart into L. Action shall be brought in E. If an Action be founded on two things material, and traversable into two Counties, Action may be brought in either of them, and where matter of Fact is mixt with matter of Record, and the matter in one County doth depend on the matter in another County; there the Plaintiff may chuse in what County he will bring this Action, Coe. 7. 1.

4. If one promise to Cure me of a Wound in London, and apply unwholesome Medicines in Middlesex, the Action must be laid in Middlesex, 11 R. 2. Action, &c. 57.

5. If an Action be brought against an Innkeeper,

keeper, upon the Custome of England, it ought to be brought in the Countie where the Tunn is, Mich. 29. Eliz. in B. R. Godbolt. See for this more, Croo. 1. last publisht 574. Godb. Rep. pl. 49. Stiles Rep. 214, 215. Hobb. pl. 262.

C H A P. IV.

Of an Action upon the Case arising upon, and conversant about a Contract, or Agreement; And of an Assumpsit; and where an Action will lie about this, or not.

SECT. I.

The Action of the Case doth very frequently arise upon, and grow in, or about some matter of Bargain, Promise, or Agreement; and for the setting forth of that which doth belong to this, these things are to be known.

1. That Contracts, Bargains, and Agreements, are sometimes about Houses, Lands, Rents, and such like Things; And sometimes they are about Goods, Cattel, and such like Things; And about Houses, &c. They are sometimes about the Inheritance, or Feehold thereof; and sometimes about Leases thereof only; and the Contracts about these things also, and so all manner of Contracts are some of them made, and put in Writing, sealed and delivered. And then it is called a Deed. To this we have nothing to say in this place. But of Agreements about Chattels especially; and therein mostly of Contracts Executory, and Agreements about matters to be

Part 1.

Deed.

done; and for this it is to be observed.

Contract,
What.

1. That Contract (largely taken) is an Agreement between two, or more, about something to be done, whereby both Parties are bound each to other, or one is bound to the other. But (more strictly) it is taken for an Agreement between two, or more, for the doing, or having one thing for another. Or (more exactly) it is taken for an Agreement for the Buying and Selling of Goods, or Cattel, whereby properly it is altered, Plow. 130. 140. 338.

The kinds
of Con-
tracts.
Real, Per-
sonal.

2. That a Contract is said to be either Real, where it is about Land, or some Real thing: Or Personal, where it is about a Personal thing, as about Marriage, Payment of Money, Delivery of Goods, or the like. Contract is also said to be either in Deed, or Express, as where I agree to give you for a Horse you have sold to me 10 l. Or it is Implied, and in Law, where it doth not arise from, or is made by the Express Agreement of the Parties, but it is made by the Act, and Operation of Law; as where an Hostler gives my Horse meat; or a Taylor makes my Garment, that they should be paid for it.

Express.

Implied.

Absolute.

Condition.

It is also Absolute, and without Reference to another thing: As where I agree to give a man 10 l. for his Horse. Or it is Conditional, and with reference to something else: As where I agree to give a man 10 l. for a Horse, if J. S. shall say, it is worth so much, Plow. 130. 140. 338.

Word
and Mouth.

Sometimes it is by Word of Mouth only, and sometimes it is in Writing; and if it be in a Writing not Sealed and Delivered, then it is all one with the Contract made by Word of Mouth: But if it shall be put in a Writing Sealed and Delivered

ing-

bered as a *Dæd*, then it is under another Consideration, and may in many Cases differ from a *Parol-Contract*; which is that Contract only that we must speak to in this place, *Plow. 130. 140. 338.*

Some Contracts also are clad with a Consideration, and have *Quid pro quo* in them (that is to say) where there is something in the Agreement that is a Recompence in *Dæd*, or in Law, and is the material cause of the Engagement, by which it is made Obligatory. And so it is where it is Executed with a Recompence; or is so certain, that it gives an Action, or other Remedy for the Recompence; as where you Sell me your Horse for Ten pound laid down, and received: Or where I agree, you shall have my Horse for Ten pound. And for this, you promise to pay me Ten pound for my Horse: Or I covenant by a *Parol-Agreement* to make you a Lease of the Mannor of Dale for three Years for Twenty pound laid down in hand, and received by me, or promised by you to be paid to me. And such a Covenant or Agreement is defined to be, An Agreement with a lawful Cause or Consideration in it. And some of them again are alone, and without any Consideration in them. And then if it be by Word only, and without Writing; or by Writing not Sealed and Delivered, and turned into a *Dæd*, then it is said to be *Nudum pactum ex quo non oritur Actio*. *Nudum pactum* is where there is an Agreement or Promise to do a thing: and no Recompence, or Consideration given, or promised for or in lieu of it. As where one Sells me a Horse, and upon a Contract he is to have nothing for his Horse: Or one shall promise to give me a Horse,

Quid pro quo. What

Consideration.

Without consideration. Nudum pactum. What.

Horse, build me a House, or do any other such like thing by a day, and I neither give him any thing, nor promise any thing for it. And is where one promises me Twenty Shillings, or that he will be my Debtor for Twenty Shillings, and there is nothing to induce it, that he shall do something for me, or the like; but if there be any thing to be done, or given by me, though never so small a matter, as a Penny, or Pennyworth, or a Pint of Wine to induce the promise, it may be good; otherwise not, but is called a Naked Promise, and void in Law, and no Action will lie upon it, Plow. 130. 140. 308. Dyer 30. 336.

With warranty and what.

Some Contracts also are made with a Warranty included within them. And this Warranty is said to be a Covenant whereby the Bargainer is bound to something about the thing sold; and so it hath respect sometimes to the property, and sometimes to the quality of the thing sold. And some Contracts are naked, and without any Warranty annexed to them, Plow. 130.

Executory.

Some Contracts are said to be Executory only; as where all, or part of the thing agreed upon is to come; as that you shall Build me a House, or that if you bring me in so much Corn by such a day, that I shall pay you so much Money, and the like, Finches Ley. 451. Dyer 336. Dyer 30. 14

Executed.

H. 8 19. Or it is executed, as where one promises and pays me Ten pound in recompence of a House I have Built for him at his request, and the like, Plow. 130. 140. 308.

Assumpsit.

What.

Part 1.

And every Executory Contract is said to imply in it an Assumpsit, the which, strictly and properly, is nothing else but a special kind of Agreement, or a voluntary promise made by Word of

of Mouth, or by a Writing not Sealed and Delivered as a Deed, by which a Man doth assume, or take upon him to do, or to pay any thing to another. But more largely it is taken for, and applicable to Agreements by Deed in Writing, as well as Agreement by Word of Mouth, Plow. 130. 140. 133.

If the Contract be by word only, then there are two considerable parts in it. Consideration
What.
How.

The first is the Consideration of the Promise, which is said to be a Cause or Occasion meritorious, requiring mutual Recompence in Deed, or in Law: Or the material cause of the Contract, with the which the same is not binding.

2. The Promise it self. But in case of a Contract in Writing, that by the Sealing and Delivery of it becomes a Deed; there the Consideration is not at all material, 2 H. 7. 11. 21 H. 6. 55. Dyer 336.

The Consideration of an Assumpſit is said to be, 1. Either Express, as where I promise that if you Marry my Daughter, I will give you Ten pound; or where one doth promise to another, that if he will build him a House, to pay him so much Money, make a Lease, seal a Bond, or the like, that he will do another thing. And in these Cases the Promise must be set forth in the Count with the Consideration. Or it is Implied, that is, where the Law it self doth imply, and enforce the Consideration, or Promise on either side. As where I Retain one to do work for me, the Law makes up a Promise of Payment for the work when it is done. So where two agree to refer differences between them to the Arbitrement of J. S. Or they make a bare submission without any Promise

Consideration Express, Implied.

Count.

mise to stand to the award of J. S. the Law will supply the Promise. And he that comes to an Inn, and calls for any thing there for his Entertainment, the Law makes a Promise that he shall pay for it. And in every Executory Contract there is said to be an Assumpsit Implied, Co. 5. 19. and 4. 94, 95.

Conside-
ration
void,
Nudum
pactum.

The Assumpsit also (like to the general Agreement or Contract) is said to be Absolute, or Conditionall, Real, or Personal, with, or without Consideration; with Consideration, and so Valuable and Actionable; or it is without Consideration, and so Void. As where I Promise to a Man for Ten pound paid to me in hand, that I will Build him a House, &c. that is good. But if I Promise a Man Ten pound, because he is my Kinsman, or the like; this is void, and no Action will lie upon it, Doct. and Stud. chap. 24. Plow. 208, 309. So that there is an express, and an implied Consideration, and an Express, and an implied Promise also in these Contracts. The express Consideration is, where any thing is expressly given, done, or promised to draw forth the Promise; and the implied Consideration, which is where the Law makes it up without any express words in the Agreement. And the express Promise in a Contract is that which is mentioned in it between the Parties. The Implied Promise is that which is made by the Law. As where a man hath done Work for me by mine appointment, that he shall be paid as much as he deserves for it; this he is as much bound unto, as if he had actually Promised to do it, Doct. and Stud. 104.

Se^ct. II.

Some general things about Actions upon the Case,
grounded upon a Contract or Assumpſit.

1. To make a good Contract to alter the pro-
perty of a thing in the Sale thereof, four things
are requisite. Part 1.

1. That the party Selling have an Ownership Property
in the thing, or a power from the right Owner to altered by
Sell it; or else that the thing be truly, and with- a Contract.
out Cobin sold in a Market overt, if it be Sale-
able there.

2. That if it be out of the last mentioned Case, Contract
that there be in the Agreement a good Considera- good with-
on, or some meritorious thing to move it. out Wri-

3. That the Agreement and Contract it self be ting, or
Certain, Perfected, and Compleat. Cere-

4. That it be lawful to be done. mony;

2. That a Contract for Goods, or Cattel, may
be made as well by Word of Mouth, as by Deed in
Writing; and by Word of Mouth without any
Solemnity or Ceremony. So that if one Bar-
gain, and Sell his Goods for Money, he may do
this without Deed, Inrolment, or any such like
matter, and without the delivery of any part of
the thing Sold, or any piece of Money in the
name of Deism.

3. That if the Contract be in and by a Writing
Sealed and Delivered, and so turned into a Deed,
as a Lease, Obligation, or the like; in this Case
this Action generally will not lie upon it; but
some other Action. And yet if one promise for
good Cause to make me a Feoffment of Land be-
fore such a day, and he doth it not till after the
day;

day; I may perhaps have an Action upon the Case for this breach of Promise.

Assumpsit. 4. That in every Contract wherein there is an Assumpsit, there are, and must be two things Considerable; the Consideration of the Promise, and the Promise it self, But if the Contract be made by a Dæd in Writing, there the Consideration is not at all material, Dyer 29. 30. 14. H. 8. 19. 9. H. 7. 21. 21 H. 7. 6.

5. That an Assumpsit may be made for others, or to others in their absence, and this may bind them, 27 H. 8. 24.

Implicit Assumpsit. 6. That in every Contract that is in any part of it Executory, there is an Implicite Assumpsit, upon which this Action may be raised: As where part of the Consideration is to be performed; or Money is paid for the thing Sold; but the same, or some part thereof is not delivered, or the like; for when one Agreeth to pay Money, or to Deliver any thing, he doth therein promise to Pay it, or Deliver it. And therefore where one Sells any Goods to another, and agreeth to Deliver them at a day to come, And the other in Consideration thereof, promiseth to pay so much Money to the other; in this Case both Parties may have an Action of Debt, or an Action upon the Case upon Assumpsit, for the mutual Executory Agreement of both Parties, importeth in it self a Reciprocal Action upon the Case, as well as an Action of Debt, Coe. 4. 94, Plow. 128.

Natural Assumpsit.

7. That every Contract that is made, before it can yield an Action, it must be compleatly finished and perfected, not only in the Minds, but by the Words of the Parties therein Interessed and Engaged.

Chap. 4. about a Contract, or Assumpsit.

49

8. A Contract, as it must be made up and compleat, so it must be duly pursued and performed in both the parts of it, Yelverton 87.

9. That if the Contract be, in the Material part of it altogether Incertain and Insensible, then it seems the whole Contract will be void, Stiles Rep. 63. 281. 264.

As touching the Consideration part of an Assumpsit only, and by it self, these things are to be known.

About the Consideration of the Promise.

1. That the Consideration is sometimes raised by the Law, when there is none at all express in the Agreement. Part. 2.

2. That the Consideration that shall be said to be valuable and good to raise an Action upon it, the same must import some gain to him that makes it, or to some other at his request; or some loss to him to whom it is made, or both. And if there be in it matter of Loss, Labour, or Danger to him to whom the Promise is made, it matters not whether there be any matter of Gain at all to him that makes the Promise, Croo. 1. 194. Hobb. pl. 6. Godb. Rep. 290. Croo. 1. last published 137. 138. And yet in a Special Case the goodness of the work done may supply the Consideration, and make the Party chargeable.

3. That the value and proportion of this Consideration is not considerable; for a Penny is as much obliging to a Promise as 100 l. But there it is probable the Jury will give Damage according to the Loss.

4. That where the Consideration doth import many things to be done, and some of them be frivolous and void, yet if any of them be good, and have a valuable Consideration in it; this will make

make the Contract good, Croo. 1. last publisht 149. And yet if Non-Assumpsit be pleaded to the charge of such a Promise, both parts of the Consideration must be proved, or the Action will fail, Croo. 1. last publisht 759.

5. That the Promise that is made upon a good Consideration is, as if it were made upon a condition precedent, Hobb. Rep. pl. 6.

6. That if a Promise be set forth to be made in Consideration of one thing, and in truth it was made in consideration of that thing, and of another; this will not be good, Croo. 1. last publisht 79.

7. That where that (which in the matter of it) may be good in a Promise, may also be good in consideration of a Promise, Brownl. Rep. 1. part. 41. 2. part 274. 279.

8. That one Promise may be a good consideration for another Promise, so as they may be made together at the same time; otherwise not, Croo. 1. last publisht 147; 148.

9. That if the Contract be made by Writing, or by writing Sealed, and not delivered and made a Dæd, or by Word of Mouth, there must be a Consideration in it, and for any Assumpsit that is in it, otherwise no Action will lie upon it. But if the Contract be made by Dæd, Sealed and delivered, the Consideration will not be material at all, Eitz. Debt 126. Broo. Action 40.

Consideration
valuable.

10. That the Consideration that must make good, and uphold such a Contract to the maintenance of such an Action as this is, must be Valuable, Lawful, and Possible, and it must be present, or to come; for if there be either no Consideration, or the Consideration be of no Value,

or Impossible, or Unlawful, or if otherwise, and it be gone and paſt; this will not make the Promise Binding, or Actionable. And therefore a meer voluntary Courteſie will not be a Conſideration to uphold an Assumpſit. And the Conſideration, as it muſt be thus laid in the Foundation of it, ſo muſt it be exactly purſued and obſerved in the Execution of it, Trin. 4. Jac. B. R. Cranfield and Green. Yelverton 87.

11. That if there be two or three Conſiderations ſet forth of a Promise, and one of them is good and ſufficient, and well alledged and ſet forth in the Declaration. Albeit the reſt be not good for the Matter, as being Repugnant, Unlawful, &c. or in the manner, when it is not well ſet forth in Pleading; this will do well enough, and the Plaintiff ſhall recover. But if two or three things be laid as the Conſiderations of a Promise, and one of them be found ſafe; in this Caſe the Action will miſcarry, Croo. 1. laſt publiſht 484. Croo. 2. 128. Popham. 32.

12. That the Conſideration that the Law looks upon as good and valuable, is ſuch as hath ſomething in it, preſent, or to come; or hath ſomething of both in it, and is not paſt. For if the Motive or Inducement of it be paſt, generally it is not good, nor binding at all.

And yet a Conſideration paſt before the Promise made, may be a good Conſideration to an Assumpſit in the Caſes following.

Conſideration
paſt.

1. Where that which is paſt, and that which is promiſed, to come, do make but one intire Act, and have dependance the one upon the other. As where I have Sold Land for Money, and after in Conſideration thereof, and without other Cause
pro-

promise to make an Estate, or an assurance of it: this is good, Croo. 1. last publisht 138. And where that which is to be done is but in pursuance of that which is done, and ought in Reason and Conscience to be done; as when one hath done a work for me, or hath served me a Time, and is not paid his Wages, and now I promise him, in consideration of this, to pay so much, Croo. 1. last publisht 42. 194. And where the Party promising is as much bound to the thing before, as he is after his promise; As where one is Indebted to me before, and in Consideration thereof promise to pay it to me. And where the thing that is done, is done by the procurement of him that makes the promise, and he in Reason and Conscience is bound to do it: As where I have perswaded a man to Engage for me, or a Friend of mine, and after I promise him in Consideration thereof to save him harmless from it, &c. Croo. 1. last publisht 282. 295. Doct. & St. 104. 8. Stiles Regist. 31. And where the first Cause continueth, as a Marriage, Natural Affection, and the Advancement of the Party, and the like: As where I promise to one Twenty pound, in Consideration that he hath Married my Daughter, Croo. 1. last publisht 59.

And where the first Act is a Kindness obliging him that promiseth, as that the Party to whom the promise is made, had at the Request of another granted the next Avoidance of a Church, Croo. 1. last publisht 295.

As to the Promise it self, and this part of the Contract alone, these things are to be known.

1. That the Promise it self as it is, not less nor more, is to be performed, Croo. 2. 235.
2. That the Promise in the Contract is sometimes

times Implied, and not Expreſſ.

3. This muſt be Certain, Lawful, and Poſſible alſo, or it will not be good.

So that the ſum of the whole Law, as to this point of Aſſumpſits and Promiſes, ſeems to be made up in theſe things that follow. That to the making up of every good Aſſumpſit, whereupon this Action may be Grounded, theſe things are Requiſite,

1. The Agreement on both Sides muſt be perfectly made and finiſhed, and nothing left to be done therein:

2. This agreement muſt be in the Words ſpoken about it ſenſible and certain, ſo that what is meant by the Partys thereby may be known.

3. The things agreed to be done on either ſide, both by him that makes, and by him that takes the Promiſe, and in the Conſideration, and in the Promiſe both, they muſt all of them be lawful, and poſſible to be done. Conſideration lawful, poſſible.

4. The Conſideration, or Motive of the Promiſe, muſt have ſomething in it that ſoundeth to the benefit of the Defendant, or ſome Friend of his, for whom he doth Interpoſe; or to the charge of the Plaintiff, or muſt (at the leaſt) have ſome probability or poſſibility of it, for which he Laboureth and hath prejudice, Croo. 1. laſt publiſht 120. 194. 283. 380. Conſideration valuable.

But for the proportion, if it be never ſo little, either of the Gain; or Value on the one ſide, as a Penny, or Pint of Wine, or the like thing, either given; or ſo promiſed, then the other may Recover it by Law upon the Promiſe, if he will; or of the Pains or Work on the other ſide. For if the Conſideration be to forbear a Suit but for one

one Mæk; or lend me a Dogg, or to shew forth a Deed, or any such like small matter: this may be sufficient to make up such a Consideration, as shall make the Assumpsit Actionable, Croo. 1. last publisht 94. 98. 123. 125. 194. 138.

5. This Benefit or Charge that induceth the Promise, must be present, or to come, and that for which he hath a Remedy; for if it be past, it is no good Consideration, except it be in the Special Cases before named, Sect. 2. part 1. of this Chapter. And if some, or one of these things be not in the Case, but that the thing which drew out the Promise is quite gone before; then is the Promise of no strength, Croo. 1. last publisht 132, 133. 137, 138.

6. If any thing be to be done by him, to whom the Promise is made, to make way for the Promise; all this must be pursued and performed by him, ere he can expect the performance of the promise, Croo. 1. last publisht 133.

7. The Promise it self is to do a thing lawful and possible; for if it be otherwise, he that makes it, is not bound to perform it.

Notice.
Request.
Demand.

8. That if any thing be to precede the doing of any part of what was to be done, as a Notice, Request, or Demand; this must first be done, and set forth in the Declaration, Croo. 1. last publisht 91. 133.

Sect. III.

What shall be said such an Agreement, that hath an Implied Assumpsit in it, supplied by the Law, upon which this Action may arise, or not.

Part 1.

It hath been laid down as a Rule, That every
Co. 1.

Chap. 4: about a Contract, or Assumpsit:

Contract made betwixt Parties doth in Law imply in it self a promise, that they will perform the Contract, Hill. 1649. Stiles Regist. 31. 75.

And that where one doth become legally Indebted to another, the Law creates a promise that he will pay this Debt; and if he do not pay it, there is a sufficient ground for the party, to whom he is Indebted to bring his Action of Indebitatus Assumpsit against him, to recover the Debt, Trin. 24. Car. 1. B. R. Stiles Regist. 32.

If one intreat me to be Bound for him, there is in this (as it is said) an Impplicite Assumpsit, that he shall save me harmless; and therefore if I be molested for it, I may have this Action, Per Justice Richardson. 2 Car. 1. at Northampton Assizes.

To save
harmless
from a
Bond.

If an Hostler give my Horse Meat, or a Tay-
lor make my Garment, he may have this Action
for the Meat, or for the Work, upon this Im-
plicite Assumpsit. And the one may keep the Gar-
ment, the other the Horse, till he be paid; or if
they deliver the thing, they may have this Action,
or an Action of Debt at their Election for the Ho-
ney. So if I come into an Inn, and call for
Provision, in this Case the Law makes up this
Assumpsit, upon which the Inn-keeper may have
either this Action, or an Action of Debt at his
choice, Finches Law 180. Croo. Rep. 2. 626.

Hostler for
Horse-
meat.
Taylor for
making a
Garment.
Inn-keep-
er.

So where a Debt is due to me on a Contract, it
seems the Law makes for me a Promise to pay it,
if I will make use of it, See Croo. 1. 250. And
yet be well advised herein, if you bring an Acti-
on upon the General and Impplicite Promise,
where no Express Assumpsit is in the Case, Croo.
1. 299.

Debt.

Upon a
delivery
of Goods.

If one deliver me any thing but Money, to deliver over to another, or to the use of another, or to be imployed to any other purpose, or upon Condition, that if he do such a thing, that I shall keep them. In these and all such like Cases, some think there is an Assumpsit implied, upon which this Action will lie in Case of breach of the Trust, Dyer 21, 22, &c. So where one doth receive Money to my use, or to deliver over to me, or enter into my Lands, and take the Profits thereof; and being required to pay, or answer the profits to me, he refuse to; some say I may have this Action, as well as an Account for my Remedy.

Breach of
Trust.

Trover
and Con-
version.

So where one findeth my Goods, he is chargeable to me for them, by reason of his Detention, by the Law in this Action, upon the Implied Assumpsit. See Chap. 8, and 9. throughout.

Upon an
Account.

If two Account together, and thereupon the one of them is found Indebted to the other, it seems the Law Implies a Promise in this; and that he to whom it is due, may have this Action without any Promise, and suppose a Promise to pay it, Hobb. Rep. pl. 117.

For work
done.

If one bid me do Work for him, and do not promise any thing for it; in this Case the Law Implies the Promise, and I may sue for the Wages, and set forth in my Declaration, that I deserved so much for the doing of it, Trin 8. Car. 1.

Count.

Contract
Executo-
ry.

Every Executory Contract is said to Import in it an Assumpsit in Law, and one may have Debt, or Action upon the Case upon it at his Election. For when one doth agree to pay Money, or to deliver any thing, thereby he promiseth to pay or deliver it. And therefore when one selleth any Goods to another, and agreeth to deliver them at

a day to come; and the other in Consideration thereof promisseth to pay so much Money to the other; in this Case both parties may have an Action of Debt, or an Action upon the Case upon Assumpsit at his choice; for the mutual Crecutory Agreement of both Parties importeth in it self Reciprocal Action upon the Case, as well as Action of Debt, plow. 128. Cro. 4. 94. 9. 87. And in this Action the Plaintiff shall not only recover Damages for his special Loss, if any be, but he shall Recover the whole Debt. And a Recovery of Bar in this Action shall be a good Bar in an Action of Debt, for the same Cause. And so a Recovery of Bar in an Action of Debt, shall be a Bar to an Action of the Case for the same thing, 12 Ed. 4. 13. 2 R. 3. 14. Brob. Action, Sec. 105. Co. 9. 87. 4. 94.

Reciprocal Promises.
Debt.
Damages.

Bar to this Action.

If two refer Matters in difference between them to Arbitrators to end it, albeit they do make no promises each to other, to abide and perform their Award, yet the Law doth supply this, and make up this by Implication, and each of them may have this Action against the other, for not performing it; upon this bare submission to an Award without any express promise, Adm. Neals Case Mich. 37. 38 Eliz. B. R. Mich. 22 Car. B. R. Stiles Regill. 7. and in Trin. 18. Jac. B. R. Brooms Case. Co. 5. 77. No. Lib. Intr. 3. B. Sect. 4. Cro. 1. 280. Cro. 1. last published 24.

Upon a submission to an Award.
Part 2.

Hoffler.

If a Man bring his Horse to an Inn, and there leave him without Agreement what to pay, the Hostler may keep him till he hath his Money; and when he hath kept him so long as he hath as much as he is worth, he may have him praised and sell him, and pay himself with the Money. But

where it is agreed what he shall have for keeping, and there is a promise, there he cannot so do, but must Sue for his Money; or the Owner take him away without payment, he is to Sue upon an Assumpsit in Law, Yelverton 66, 67.

Carrier.
Taylor.
Smith.

If I be a Carrier, and one put Goods into my Hands to Carry; or a Taylor, and one put Clothes to me to make. Or a Smith, and he put his Horse to me to be shod, and I do the work; he is bound by Law to pay me for my work, as much as I deserve, though he never made me any promise for it; and this is supplied by Law, and Recoverable in this Action, Croo. 2. 263. And the Taylor may keep the Clothes he makes, till he be paid for them; but he cannot Sell them, and pay himself. And if there be a promise to the Taylor what he shall have, he must Sue for this; or if the Owner take them away without payment, the Taylor may have this Action upon the Assumpsit in Law, and have as much as he deserves, Yelverton 66, 67.

Against an
Executor
or Administrator,

An Executor, or Administrator, cannot be charged in an account for any Receipt, or Occupation by the Deceased; nor in Debt upon the Contract of the Deceased. But it is thought this Action upon the Case in the first, and it is clear it will lie in the last Case upon the Implicite Contract. And therefore if one receive my Money to account, and he and I cast it up, and agree in certain what is due, and then he die; in this Case it seems I may have this Action against the Executor, or Administrator, for what was cast up, and agreed; albeit I cannot have an account, Coe. 4. and 8. 94. 133. And Hill 13. Jac. per Chief Justice. And so adjudged. For by an Account between the parties, that

Upon an
Insimul
computa-
tals,

that which was before is made certain, and upon this an Assumpsit will lie upon the Consideration. *Lato, Yelverton 70. So upon an Indebitatus existit. Goldsb. and Brownl. 14. Stiles Rep. 214. But if the former Debt be in the Realty, as for a Kent, or the like, there it will not arise, but upon some Collateral Cause, as Forbearance, and a new Promise, &c.*

Upon an Indebitatus.

Idem, If I Sell to another Cloaths, for 370. l. one Moyty thereof to be paid within fourteen days, and the other Moyty to be paid at the end of three Months; it seems there is in this an Implied Promise to pay the Sums at that day, Croo. 2. 544.

If one in Consideration that I will forbear to Sue I. S. for such a Debt, promise to pay me the Debt; it is said, this shall be intended a total and absolute Forbearance. And that there is in it an Implied Promise in him to whom it is made, that he shall forbear his Suit totally, Croo. 2. 683. 397.

Every Executory Contract, and every Debt that is not upon a Record, or upon a Specialty, or for Rent upon a Lease, which may be turned into Damage; as upon an Account, or upon a Waging, or upon an Agreement, hath this Implied Promise in it; and the Plaintiff may say the Defendant did promise it, and make the Debt; or first cause the Consideration of it.

Upon an Executory Contract.

Sec. 1. If a man promise to pay another a sum of money, and the promisee sues him for it, the promisee must show that the promise was made, and that the promisee has not paid the money, and that the promisee has not released the promisee from the promise. And if the promisee can show these things, the promisee shall recover the money.

Sec. 1.

SECT. IV.

What shall be said a Good, Express, Entire, Contract, Covenant, Agreement, or Assumpsit, upon which this Action of the Case may be grounded, or not.

Part I.

Contracts and Assumpsits are to be considered altogether, or asunder, and in the parts thereof. And being considered together, and as one entire thing, there must be in every Good Contract and Assumpsit these things.

1. There must be Persons able to Contract.
2. The Contract must be perfect and consummate.
3. There must be some good Consideration in it to induce the Promise and undertaking.
4. There must be a certainty in the Agreement, and the Contract must be made in such words, whereby the minds of the Parties in it may be known.
5. The Agreement must cohere within it self.
6. It must be lawful, both in the Consideration, and in the Promise.
7. And it must be weighty and serious. And therefore the Law looks upon Contracts and Assumpsits, made by Persons disabled by Law to Contract and Promise, Imperfect and not Finished: Without any valuable Consideration, Unlawful, Impossible, Uncertain, Insensible, and Doubtful, Repugnant, Vain and Frivolous, as Void, and doth not allow of any Action to be brought upon them. And if the Contract be about any thing to be Sold, or make an Alteration of Property, there is this also to be looked upon. If the

Chap. 4. about a Contract, or Assumpfit.

the Seller have an Ownership in the thing Sold, or a power to Sell it; or else that it may be truly and without Covin sold in a Market overt, Co^o 5. 83. Plow 302.

In the parts of a Contract, these things therefore are especially to be Considered.

1. What the Persons are by, to, and between whom it is made.

2. In whom the thing Sold, if it be about a Sale, and the property of it is, about which the Contract is made.

3. Whether it be Consummate and Perfected.

4. Whether there be any Consideration in it, and whether that be a good Consideration, or not.

5. The manner and frame of the Words of the Contract and Assumpfit.

6. The matter of the Promise, or the thing it self undertaken; Whether it be, 1. Lawful. 2. Possible. 3. Sensible and Certain. 4. Agreeing within it self. And 5. Serious and Weighty.

1. For the Persons by, to, and between whom it is to be made. And where one shall charge, or be charged by the Contract of another.

As touching the Persons Contracting: This Part 21
is to be known.

1. That the Persons Contracting, must be Persons able to make such a Contract, and not disabled by Law to make it, as Infants, Women that have Husbands, and the like. And yet generally Promises made to them are good.

2. A Tray^or, or Fel^on, may at any time as Traytor, ter his Offence, and before his Conviction, Sell or Felon, any of his Goods to maintain himself, and as to this have his Action, as another man may have. And so happily he may be charged by this Action

Ideot.

as another man, *Coo.* 8.— 95. 171.

3. An Ideot made so of God, till he be seized or committed by the King after his Title is found by Office, may (as it seems) Sue and be Sued in this Action, upon any such Contract or Assumpsit, by a Guardian, Attourney, or some other way, See *Coo.* 4. 125.

4. A Contract to another may be of advantage to me, *Hetleys Rep.* 176.

Assumpsit,
by, or to
the Hus-
band and
Wife, or
either of
them.

The Assumpsit of a Woman that hath a Husband, regularly doth not bind the Husband, yet a promise made to such a Woman is good, as a promise made to a Man is good, so as there be a good Consideration in it, *Huttons Rep.* 105.

The Husband and Wife may joyn in a Suit upon an Assumpsit to the Wife, *Dum sola suit.* Hill. 5. *Jac. B. R. Wolverton and Day.* *Croo.* 2. 64.

If one promise to a Feme Contract, that if she will procure her Husband to Levy a Fine of such Land, he will give her a Riding Suit; In this Case for Breach of Promise, they must joyn in the Action. So if a Promise be made to the Husband to pay a Legacy given to his Wife, *Adjudg.* *Stiles Rep.* 297. *Cotrell and Theobalds B. R.*

One bound
by the
Contract
of another.

If one promise to give my Wife Twenty pound, we must both joyn in an Action for the Recovery of this Money, *Bulstr.* 1. 122.

A promise, if good, made to the Wife, is all one as if it were made to the Husband: And therefore if one say to my Wife, that if I will let out A. who is in Prison on an Execution for my Debt, that if A. pay it not to me such a day, he will pay it, I alone may Sue him for this, 27 H. 8. 24.

The Husband alone may Sue upon an Assumpsit made to the Wife, and declare as upon an Assumpsit

ſumpſit made to himſelf, or they may Sue together. Croo. 1. laſt publiſht 61. 27 H. 8. 24, 25. Noy. 19. The Aſſumpſit of the Wiſe for neceſſary Apparel will not bind the Huſband, Huttons Rep. 105.

The Huſband is in many Caſes chargeable in this Action upon a Contract made with his Wiſe, and ſo he may be charged upon the Contract for a thing Bought and Sold, or any Incident to it, as upon his own Contract. And therefore if ſhe Sell her Huſbands Goods, by authority precedent from him, or by his conſent Subſequent; or where he doth not diſagree to it during his life, in the two firſt Caſes clearly the Contract is good, 27 H. 8. 25. So if the Wiſe Buy any thing by authority General, or Special, from the Huſband, or without Authority, if it be for her neceſſary Apparel, the Huſband will be chargeable herewith, Dyer 234. Huttons Rep. 105. So where the Wiſe doth uſe to Buy and Sell and Manage the Eſtate of the Huſband without him, or the things Sold be ſuch as are proper to a Wiſe to Sell, as Eggs, Butter, Cheeſe, &c. there her Contracts will bind him. But if ſhe Buy any thing for her Huſband, or to his uſe, without authority General, or Special from him, this Contract will not bind him, albeit the thing Bought be ſpent in his Houſe. And yet if he agree to it after the Buying, it will bind him. And in ſuch Contracts made by the Wiſe, the Huſband may declare as upon a Contract made to himſelf; and this Action will lie as it will upon Contracts made with himſelf. But Collateral Promiſes as Warranty, and the like, to ſuch Contracts annexed, will not bind the Huſband without his ſpecial Agreement,

Contract
Sale of
Goods, or
not.

By a Feme
Covert.

Warranty.

Assump-
fits by or
to an In-
fant, and
his Con-
tract.

21. H. 7. 40. 20 H. 6. 22. old N. B. 62. 27 H. 8. 25.

An Infant under 21 years old, though but a day, will not be Bound by any Contract or Assumpsit of his; though it be made never so much in his own advantage: And therefore this Action will not lie against him upon any such Contract or Assumpsit. And yet his Contract for necessary Meat, Drink, and Apparel, Physick, Schooling, and the like necessities, is as good and binding as another mans Contract is; and so he is chargeable himself, and his Executor after him, Noys Rep. 87. Popham 151. To a Taylor, for making Clothes for him, Noys Rep. 85. To a Brewer, for Beer for him, Noys Rep. 85. And the Judges, not a Jury are to Judge what shall be said necessary, Brownl page 168. Croo. 2. 494. 560. Leonard Rep. 114. Bulstr. 1. part 38. Coe. 9. 87. Plow. 364. 10 H. 6. 14. Coe. upon Lit. 172. 18 Ed. 4. 2. Hobb. Rep. 96. And yet if after this the Seller and he come to an Account, and bring what he had of him to a certainty, he may not Sue upon this Account stated, Trin. 24. Car. B. R. Stiles Regist. 184.

Account.

And some say, if he Buy a Horse, and he give Earnest, and the Seller break with him, he may have this Action against the Seller, but shall recover small Damage; for the Seller could not have Recovered the Money agreed upon between them, if he had delivered his Horse; and the Infant may bring an Action of Account for his Earnest Money again. It is not safe therefore to make any Contract with an Infant; for some say, if he Sell a Horse, or Goods, and deliver it with his own hands, that this Contract is not Void, but Voidable only, 26 H. 8. 2. 21 H. 7. 39. 18

Ed.

Ed. 4. 2. If he Buy Wares in a way of Trade, and Get by it, yet this will not bind him, Croo.

2. 494.

The Master is in many Cases chargeable in this Action, upon the Contract of his Servant. And fr^o this we are to know, That the Contract of a Servant in Buying and Selling will Bind the Master, and make him chargeable for the things Bought, in these Cases,

By a Ser-
vant for
the Master;

1. Where the Servant is a known, and a common Bayliff to his Master, and he doth use to Buy for him, and he doth mention his Master in the Bargain, and doth Buy for him.

2. Where the Master doth give a precedent Authority to him so to do, and he doth mention his Masters name in the Bargain, and Buy for him, albeit the Master never have the thing Bought; and in these Cases the Contract is good, albeit the Master have no notice of it; and any Friend may be a Servant in the last Cases. For if any Servant of mine by my appointment Buy any Goods for me, or to my use, by this the Property of them is in me; and this shall be said my Buying, and I must have them, Trin. 9. Jac. B. R. Mores Case.

Contr. is
good.

3. Where the thing Bought doth come to the Masters use, and he doth assent to it: But if it do come to the Masters use, and he doth not agree to it, Contra, especially if the things be unnecessary.

4. Where he doth after the Buying agree to it, though it come not to his use; for a Subsequent Agreement is equivalent to the precedent Authority, and the Seller may have an Action of Debt, or this Action as the Case is against the Master. And if the Servant do make any special Promise to pay the Money, he may have an Action of the Case

Case against the Servant, Fitz. 20. 27. 27. Aff. 5. Plow. 11. F. N. B. 62. Doct. and Stud. 137. Dyer 230. 237. F. N. B. 120. G. 11 H. 6. 20. 21 H. 7. 40. And some think these Contracts to be good, although he never use his Masters Name in them. But in other Cases the Contract is void as to the Master, and will not bind him.

If my Servant by my command sell my Horse, the Money is to be paid to me, Hetley 175. So in Selling of the Masters Goods, or Cattle, the Contract of the Servant will bind the Master in these Cases,

1. Where the Servant hath a precedent Authority General, or Special, from the Master to sell the thing; And here it will bind, albeit the Master have not notice of it, and receive not the Money of his Servant. But if the Servant give away his Goods, contra.

2. Where the Master, after notice of the Sale, doth agree to it.

3. Where the Servant is a common and known Bayliff, and doth use to Buy and Sell for his Master. And if such a Servant shall sell, or pledge his Masters Horse, or exchange his Dr for Wheat, that cometh to his Masters use, this is good, and the Party that hath Contracted with him need not aver that he had Authority from his Master. And in all these, and such like Cases, the Master may suppose the Contract to be made with himself, and sue in his own Name for the Money, Qui per alterum facit per seipsum facit. Dyer 230. Noys-Rep. 110. Einches 1cy. 66. Broo. Contract 24.

If therefore I send my Servant to a Market, or Fair, to Buy any thing for me, and do not tell him

Aver-
ment.

him of whom he shall Buy it; in this Case, of whomsoever he Buy it I shall be Chargeable. But if I bid him Buy of one man, and he Buy it of another, I shall not be Chargeable for this, Doct. and Stud. 137. So if I bid another deliver to my Servant what he shall call for, and I will pay him; in this Case I shall be Chargeable for whatsoever my Servant doth fetch, Coo. 8. 146.

And therefore upon all these Cases, where this Action of the Case will lie upon the Contract made with me, it may lie upon the Contract made with my Servant for me, or to my use.

But for any thing Collateral to the Bargain; my Servants Contract shall not bind me. And therefore where he hath Authority to Sell my Goods, and he doth Sell them, and warrant the Goods, the Sale will bind me. But the Warranty will not bind me, 11 Ed. 4. 7. Warranty.

So if a Taverners, or Mercers Servant, or a Packer, Bayliff, or Shepherd, that hath the Custody of his Masters Goods, shall give them away, this will not bind the Master, but he may sue him, that shall meddle with the Goods, for them, Noy 110. Broo. Done. 56. Breach of trust.

If a Servant make a Bill, testifying that he Bought Wax to the use of his Master; and this without Sale, and by this he doth bind himself to pay the Debt; In this Case this Action, but not an Action of Debt will lie against the Servant, for it is his Assumpsit, but his Masters Debt, Debt.
Dyer 230.

But Contracts made by, or, with a Stranger, for me, or to my use, it is said, shall not bind me as in the Cases before. And therefore if there be Mother, Son, and Daughter, and the Mother Assumpsit to, or by another to my use. Part 3.
having

having a Joynture on her Hons Land, the Son in Consideration that his Mother doth surrender, doth assume with her to pay the Daughter a Hundred pound at a day; in this Case the Daughter cannot bring this Action against the Son, for this Money at Law. But happily in a Court of Equity she may Recover it, Trin. 18. Jac. B. R. Adjudged. And yet it is laid down as a Rule, That any one, to whose use, or for whose benefit a Contract is made, may have an Action upon the Breach of the Promise, although the Promise were not made to him, but to another, Pasche 23. Car. 1. B. R. Stiles Regist. 31.

If one in Consideration that I have paid Ten pound, assume to a stranger to assure me an Acre Land; no Action will lie for me upon this Promise at Common Law. But in the Court of Equity I may perhaps have Relief for it, Pasche 9. Jac. B. R. Jolleys Case by three Judges. And yet if I Sue out a Latitat against one that owes me Money, and use I. S. to follow it, and he gets a Warrant to the Sheriff to Arrest him; and thereupon the Party promise him if he will forbear it, he will appear at the day of the Writ, or pay me my Money, he cannot Sue him upon this, but haply I may, but I must lay the Promise as it is made to him, Croo. 1. last publisht 369.

If A. be Indebted to B. and a Stranger follows the Suit for B. and A. comes to the Stranger, and says to him, forbear your Suit and I will pay your Master; the Master may have an Action upon this, and he must bring the Action, Herleys Rep. 176.

If I agree with another that I. S. my Son and Heir shall Marry Constance his Wintwoman. And in Consideration of that I agree to assure Constance Land

Land of Ten pound a Year for her Joynture, he assumes to me to give my Son in Marriage with the said Constance Two Hundred Pound; this is good, and it seems the Son, and not the Father is to bring the Action if there be cause, Croo. 1. last publisht 620. Hetleys Rep. 176.

If A. be Indebted to B. and a stranger follows the Suit for B. A. comes to the stranger, and says to him, leave the Suit, and I will pay your Master, the Master must bring in the Action, Hetleys Rep. 176.

The Contract between the Parishioners, and the Parson, about Increase of Tithes, will not bind as to the Successor after the Parsons death, but the Contract will die with him, March. Rep. 87.

If one in Consideration that I will consent that my Son shall Marry his Daughter, and that after upon his Request, I will make a Joynture of Twenty pound a Year to the Daughter, assume to give Two Hundred pound to the Son in Marriage; the Action for this Two Hundred pound it seems must be brought by the Son, Hetleys Rep. 176.

If I and another man be speaking together, about a Marriage between his Daughter, and my Son; and in our Conference he doth use these words, I shall give him One Hundred pounds that shall Marry my Daughter with my consent, and after my Son Marry her, with his consent, he may not have this Action upon this speech, Pasche 3. Jac. B. R. Goldsmith and Weston.

It hath been said, that it was adjudged, that where two Fathers promise upon Marriage, between the Daughter of the one, that the Father of the Son will give a Hundred Pound in stock, and the

Fa

Father of the Daughter a Hundred Pound in Money, the Money was paid, and the Stock not delivered, that the Action was maintained by the Father. But the Judges doubted in that Case, Hetleys Rep. 176.

If there be Debate between me and my Son, and I. S. and he hath Beaten me, &c. and assaulted my Son, and I have sworn the Peace, and am Prosecuting him before Justices of the Peace, and the Father of I. S. in Consideration that I and my Son will desist our Complaint, and that his Son be no further vexed for that Cause by us assumed, that his Son shall keep the Peace towards me, and W. R. my Son, and I do desist, &c. and the said I. S. doth break the Peace upon my Son, &c. and Wound him, and I am at charge to Cure him; in this Case the Action will not lie on this Promise for me as it seems, albeit I was at charge to Cure him; but for my Son, it will lie, and against the Father of I. S. upon his Promise for his Son: And if in this Case a meer stranger had made this Promise upon this Consideration in behalf of the Son of I. S. it had been good, Croo. 1. last publisht 849. 881.

If one Promise to the Father, to give a Hundred Pound to his Son in Marriage with the Defendants Daughter, in Consideration of a Joynsure assured by the Plaintiff, the Action being brought by the Father for Non-payment of the Hundred Pound to the Son; it is said to be adjudged not to be maintainable by the Father, Levett and Haws. Hill. 41. Croo. 1. last publisht 849.

If A. S. assume to my Father upon a Marriage to be had between me and his Daughter to pay me Forty Pound. The Party to whom the Benefit
of

of a Promise attrewe, may bring this Action, Hetleys Rep. 30.

Where a Promise is to perform to one that hath an Interest in the Cause, in this Case he to whom the Promise is to be performed, and not he to whom it is made, shall have the Action. If two Joint-Tenants be of a House, and the one Conditions with the other to go to Market to Sell it, who doth it, and appoints the payment to be made to another, here he to whom the Payment is to be made, shall have the Action. So if my Servant by my Command sell my Horse, I am to have the Poney, and the Action for it, and not my Servant, for the Interest is in me, Hetleys Rep. 176.

By, or to another to my use.

But in Case where he to him whom the Promise is made, hath no Interest, there he to whom it is made, and not he to whom it is performed, shall have the Action. As if A. promise B. to pay I. S. Ten Pound upon a Consideration not performed, B. and not I. S. shall have the Action.

If a man have a License to Transport Herrings to Spain, and the Daughter of one of the Parties had a License. And a Stranger comes to him, and saith, procure me that License, and I will give you a Hundred Pound, and a Hundred Pound to your Daughter, in this Case the Daughter shall have the Action for this Hundred Pound promised to her.

If a Promise be made to my under Sheriff upon a Writ delivered to him, that if he would make I. S. his Bayliff, and promised that if he did suffer him to escape, that the Plaintiff should take no advantage of it against me, this is a good promise and Consideration as to me, upon which I

may bring my Action, Croo. 1. last publisht 178.
271.

And so generally in all Cases, any one to whose use, or for whose benefit a Promise is made, may have an Action for the Breach of this Promise, although the Promise were not made to him, but to another, Pasche 23. Car. 1. B. R. Stiles Regist.

31. As if one Promise my Father, that if I will Marry his Daughter, he will give me Forty Pound, I may Sue upon this, Hetleys Rep. If a Promise be to another to make Satisfaction of all the Debts in which he who is absent, is Indebted to another, in this Case he that is Absent, may maintain this Action, M. 43. 44 Eliz. Rixon and Horton. Trin. 7 Car. Co. B. Cores Case. Hetleys Rep. 176, 177.

If one follow a Suit for me against I. S. and when he is to be Arrested, to be forborn, he doth promise to I. S. to appear at the day, or pay the Debt; in this Case I my self must Sue on this Promise, and in mine own Name, as upon a promise made to me, and so Declare, and not upon a Promise made to I. S. Croo. 1. last publisht 369.

Assumpsit
by, or to a
man that
is Drunk.

Part 4.

A Contract made with a man when he is drunk, is as good as if it were made with him when he is Sober. And an Assumpsit or Promise made by, or to him in his Drunkenness, is as good, as if it were made by, or to him, when he is Sober; and so he may Sue, and be Sued thereupon, as another man may be.

Assumpsit
by, or to
two or
more.

If an Assumpsit be made by two, or more, at one time; they must be Sued together, and one of them cannot be Sued without the other. And yet after the death of any of them, the Survivor or Survivors may be Sued, Bolstr. 1. part 16.

If

If an Assumpfit be made to two men; as where two mens Cattle be Distrained, and upon their payment of Ten pound to him, he doth promise to procure the Cattle to be Redelivered to them; in this Case they must joyn, and may not sever in Action. And so generally where an Assumpfit is made to two, or more; no one of them may Sue while the rest Live, but they must Sue all together. But after the Death of one of them, the Survivor, or Survivors alone may Sue, Stiles Rep. 156, 157. 203. Co. upon Lit. 297. Brownl. 2. part 99. Noys Rep. 135.

The Contract of a Parson with one of his Parish about Increase of Tithes, will not bind the Successor after the Parsons Death. But it will Die with the person that made it, March. Rep. 87.

If an Abbot had bought Goods, and part of it had come to the use of his House, and part of it not, yet was he Chargeable for all, 38 H. 6. 28.

An Executor or Administrator may have this Action against another man for Money for Corn, or other things Sold by the Testator, or upon a promise to save Harmless, Harry, or the like, made to the Testator. And he regularly may take Advantage of all the Contracts made by the Testator; as for a Rent due, or upon a Trover, and Conversion, Assumpfit made to the Testator, and the like, Croo. 1. 159. part 1. last publisht 377. Stiles Rep. 463. Co. 9. 86. Plow. 32. Croo. 2. 299. Bendloes 172.

It is now out of question, that this Action will lie against the Executor or Administrator upon the Contract, or Assumpfit of the Testator. And that without any Averment of Assets at all; but these things have been much Controverted here-

Assumpfit by a Parson, not binding to the Successor.

By an Abbot.

Assumpfit to a Testator, or to an Executor or Administrator.

Part 5.

Assumpfit by a Testator, or by an Executor, or Administrator.

Averment.

tofoze. And so it will lie in all Cases whatsoever, wherein there is a Contract made to the Testator, or Intestate, or any thing due which ariseth by way of Contract, and where the ground of a Promise is a true Debt. As where he shall for good Cause promise to pay Money, or where he shall borrow Money, or where he shall Buy, or have any of my Goods. So where he shall promise Money for a Marriage-Portion. And so although it be to be paid after the Testators death, Yelverton 55, 56, 57. Brownl. 2. part 137, 138. March. Rep. 9. Godb. Kerchers Case. Pasche 8 Jac. pl. 243. in the Exchequer Chamber. Bullstr. 1. part 158, 159. Owens Rep. 56. Croo. 1. last published 59. Co. upon Lit. 53. Dyer 114. Co. 9. 87. and 10. 77. Croo. 2. 613. Bullstr. 3. 235, 236.

And in 20 Jac. Croo. 2. 663. in the Exchequer Chamber, it was agreed by all the Judges, and Adjudged; That there is no difference between a Collateral Promise made, and broken by the Testator in his Life time, as where it is to deliver up such a Bond (as the Case was there) or the like, and a Promise made by him to pay Money for a Marriage-Portion, or the like; for the Executor shall be Charged in both Cases alike, Croo. 2. 294. 571. 662. Jenk. Century 6. Case 81. Cent. 8. 80. Hobb. 236. Stiles Rep. 158.

And yet it is said, that this Action will not lie against the Executor, or Administrator of a Lessor that doth Covenant to pay Quit Rents during the Term, M. 2. Jac. per Curiam in Herlakendens Case. Yelvertons Rep. 89. Co. 9. 87. Croo. 2. 570.

But the Law is now, that Regularly the Executor or Administrator shall be Charged with all the

the Contracts made by the Testator in this Action; Coo. 9. 86. Plow. 82. As if a man Promise to pay Money, or to pay that which is the nature of a Debt, or where the ground of the Promise is a true Debt, and he die before it be performed, the Executor or Administrator shall be Charged with it; Hobb. Rep. pl. 278. Coo. 9. 68. Plow. 182. But otherwise it is where the Assumpsit is to do some Collateral thing, as to Build a House. or the like. Or when it is to pay Money in Consideration of some Collateral thing, as in Consideration of the Enlargement of a man out of Prison, or the like. And upon this Difference it is said it hath been oft Adjudged. Trin. 3. Jac. B. R. Yet see Coo. 10. 77. It was given as a general Rule, That by the Assumpsit of the Testator to pay a Debt, or perform a Duty, an Action of the Case lieth against the Executors, New. B. of Entries f. 1, 2. Plow. 181. Croo. 1. last publisht 59. 91. Croo. 1. 216. 370. And yet see Croo. 1. last publisht 454. 47, 38 Eliz. in the Exchequer Chamber upon a Writ of Error between Stubbins and Rotheram it was Adjudged. That where the Testator promised in Consideration of a Marriage to pay a Hundred pound, that this is not Recoverable of an Executor or Administrator; And there said, that the like Judgment was given between Griggs and Helhouse, in an Action brought against an Administrator, upon a promise of the Intestate to pay Money, &c. Croo. 1. last publisht 455. Croo. 2. 571 But the Judgments of latter Times are otherwise. And in Pasche 18. Jac. B. R. A. in Consideration that B. would Marry her, assumed to leave her worth five Hundred pound, and Died; And in the Exchequer

may bring my Action, Croo. 1. last publisht 178.
271.

And so generallly in all Cases, any one to whose use, or for whose benefit a Promise is made, may have an Action for the Breach of this Promise, although the Promise were not made to him, but to another, Pasche 23. Car. 1. B. R. Stiles Regist. 31. As if one Promise my Father, that if I will Marry his Daughter, he will give me Forty Pound, I may Sue upon this, Hetleys Rep. If a Promise be to another to make Satisfaction of all the Debts in which he who is absent, is Indebted to another, in this Case he that is Absent, may maintain this Action, M. 43. 44 Eliz. Rixon and Horton. Trin. 7 Car. Co. B. Cores Case. Hetleys Rep. 176, 177.

If one follow a Suit for me against I. S. and when he is to be Arrested, to be forborn, he doth promise to I. S. to appear at the day, or pay the Debt; in this Case I my self must Sue on this Promise, and in mine own Name, as upon a promise made to me, and so Declare, and not upon a Promise made to I. S. Croo. 1. last publisht 369.

Assumpsit
by, or to a
man that
is Drunk.
Part 4.

A Contract made with a man when he is Drunk, is as good as if it were made with him when he is Sober. And an Assumpsit or Promise made by, or to him in his Drunkenness, is as good, as if it were made by, or to him, when he is Sober; and so he may Sue, and be Sued thereupon, as another man may be.

Assumpsit
by, or to
two or
more.

If an Assumpsit be made by two, or more, at one time; they must be Sued together, and one of them cannot be Sued without the other. And yet after the death of any of them, the Survivor, or Survivors may be Sued, Bolstr. 1. part 16.

If

If an Assumpfit be made to two men; as where two mens Cattle be Distrained, and upon their payment of Ten pound to him, he doth promise to procure the Cattle to be Redelivered to them; in this Case they must joyn, and may not sever in Action. And so generally where an Assumpfit is made to two, or moze; no one of them may Sue while the rest Live, but they must Sue all together. But after the Death of one of them, the Survivor, or Survivors alone may Sue, Stiles Rep. 156, 157. 203. Co. upon Lit. 297. Brownl. 2. part 99. Noys Rep. 135.

The Contract of a Parson with one of his Parish about Increase of Tithes, will not bind the Successor after the Parsons Death. But it will Die with the person that made it, March. Rep. 87.

If an Abbot had bought Goods, and part of it had come to the use of his House, and part of it not, yet was he Chargeable for all, 38 H. 6. 28.

An Executor or Administrator may have this Action against another man for Money for Corn, or other things Sold by the Testator, or upon a promise to save Harmless, Parry, or the like, made to the Testator. And he regularly may take Advantage of all the Contracts made by the Testator; as for a Rent due, or upon a Trover, and Conversion, Assumpfit made to the Testator, and the like, Croo. 1. 159. part 1. last publisht 377. Stiles Rep. 463. Co. 9. 86. Plow. 82. Croo. 2. 299. Bendloes 172.

It is now out of question, that this Action will lie against the Executor or Administrator upon the Contract, or Assumpfit of the Testator. And that without any Averment of Assets at all; but these things have been much Controverted here-

Assumpfit by a Parson, not binding to the Successor.

By an Abbot.

Assumpfit to a Testator, or to an Executor or Administrator.

Part 5.

Assumpfit by a Testator, or by an Executor, or Administrator.

Averment.

tofoze. And so it will lie in all Cases whatsoever, wherein there is a Contract made to the Testator, or Intestate, or any thing due which ariseth by way of Contract, and where the ground of a Promise is a true Debt. As where he shall for good Cause promise to pay Money, or where he shall borrow Money, or where he shall Buy, or have any of my Goods. So where he shall promise Money for a Marriage-Portion. And so although it be to be paid after the Testators death, Yelverton 55, 56, 57. Brownl. 2. part 137, 138. March. Rep. 9. Godb. Kerchers Case. Pasche 8 Jac. pl. 243. in the Exchequer Chamber. Bullstr. 1. part 158, 159. Owens Rep. 56. Croo. 1. last published 59. Co. upon Lit. 53. Dyer 114. Co. 9. 87. and 10. 77. Croo. 2. 613. Bullstr. 3. 235, 236.

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the Contracts made by the Testator in this Action; Coo. 9. 86. Plow. 82. As if a man Promise to pay Money, or to pay that which is the nature of a Debt, or where the ground of the Promise is a true Debt, and he die before it be performed, the Executor or Administrator shall be Charged with it, Hobb. Rep. pl. 278. Coo. 9. 68. Plow. 182. But otherwise it is where the Assumpfit is to do some Collateral thing, as to Build a House, or the like. Or when it is to pay Money in Consideration of some Collateral thing, as in Consideration of the Enlargement of a man out of Prison, or the like. And upon this Difference it is said it hath been oft Adjudged. Trin. 3. Jac. B. R. Yet see Coo. 10. 77. It was given as a general Rule, That by the Assumpfit of the Testator to pay a Debt, or perform a Duty, an Action of the Case lieth against the Executors, New. B. of Entries f. 1, 2. Plow. 181. Croo. 1. last publisht 59. 91. Croo. 1. 216. 370. And yet see Croo. 1. last publisht 454. 47, 38 Eliz. in the Exchequer Chamber upon a Writ of Error between Stubbins and Rotheram it was Adjudged. That where the Testator promised in Consideration of a Marriage to pay a Hundred pound, that this is not Recoverable of an Executor or Administrator; And there said, that the like Judgment was given between Griggs and Helhouse, in an Action brought against an Administrator, upon a promise of the Intestate to pay Money, &c. Croo. 1. last publisht 455. Croo. 2. 571. But the Judgments of latter Times are otherwise. And in Pasche 18. Jac. B. R. A. in Consideration that B. would Marry her, assumed to leave Her worth Five Hundred pound, and Died; And in the Exchequer

Chamber it was Adjudged upon a Writ of Error, that the Executor is Chargeable, Croo. 2. 511. If the Testator being an Infant Buy Wares, and after give Bond for it, and Die; and his Executor without any other Consideration doth assume to pay it, no Action will lie for this, Adjudged. Owens Rep. 94. Nor will it lie upon a general Indebitatus with the Testator, or Intestate, March. 9. Owens Rep 94. See Popham 189. Stiles. Rep. 463. Sect. 3. of this Chapter, part 2.

Sect. V.

Contract
or Assump-
sit per-
fect, or
imperfect.
Part 1.

Contracts
avoidable,
or not.

Every Agreement including any thing to ground this Action upon, must be perfect, and Consummate. For if there be only a Treaty or Communication begun, and not perfected, no Action will lie upon it. And therefore if one agree with me to give me so much for my Horse, as I. S. shall judge him to be worth; this Contract is not Compleat, nor can any Action be grounded upon it, till I. S. have given his Judgment. And for this the Law will allow reasonable time. And if I. S. Die before he give his Judgment, the Contract is Determined, Plow. 6. 14. H. 8. 19. But it seems the Horse must be delivered, or Money paid before the property alter, or Action lie for the Money, See more Co. 10. 76. 102. Dyer 356. 17 Ed. 4. 4. 9 H. 7. 21. 10 H. 7. 6. Co. 5. 83. Plow. 302. 479, Dyer 98.

So if a Bargain be, that the Buyer shall go and see the thing, and if he like it, shall give so much for it; and he when he seeth it doth declare his liking of it, or take it away: Thereby the Bargain is perfect, and he cannot afterwards by Disagreement avoid it. And if he once dislike it,
here

Chap. 4. about a Contract, or Assumpsit.

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hereby the Contract is Determined. And 'tis is not perfect till he Declare his liking of it, 18 Ed. 4. 10. Dyer 99.

If two speak together about an Agreement, and they in the midst of their Discourse break off, and say they will talk further of it to morrow; this is Imperfect, and no Action will arise upon this Conference, Plow. 362.

If the Contract be to pay part of the Money presently, and the rest at a day to come, and the Seller give him time till that day to refuse; In this Case the Bargain is not perfect till the day, and yet if he agree to it before the day, this may perfect it, and Reciprocal Actions will lie for the things and Money, Dyer 99.

Reciprocal Actions
[Assumpsit]

If two be in Speech about Marriage between their Children, and one of them saith to the other, I intend to give my Daughter a Hundred Pound to him that shall Marry her with my consent; this is not compleat, nor will any Action lie upon it.

If the Agreement be, that he shall see the thing, and if he like it when he hath seen it, for so much Money he shall have it; in this Case when he hath paid the Money, and agreed to have it at that rate, and not before, the Contract is perfect, and Actions will arise, 17 Ed. 4. 1.

If a Lessor for Years by Agreement Sell away his Interest, on Condition that the Purchaser shall get the good will of the Lessor, and pay the Lessor so much as I. S. shall Arbitrate; in this Case when he hath gotten the good will of the Lessor, and I. S. hath Arbitrated what shall be paid, I. S. may sue for the Money, 14 H. 8. 20.

If a Contract be for any thing at a Price, but

Property
altar.

it is part of the Bargain, that the thing must be delivered to the Buyer at such a time and place; this is a good Contract to alter the Property; if the thing be delivered at the time and place, otherwise not, Fitz. Mostrous de Faits. 144.

If I prize Wares, and the Tradesman say so much, now the Bargain is not perfect, till the Money be paid, unless a day be agreed upon for the payment of the Money, 17 Ed. 4. 1.

Contract
in Law.
Contract
not pur-
sued.

If one promise me Three Shillings a Week for his Diet and Lodging, and I find him Diet, but do not find him Lodging, this Contract is perfect. But no Action can be brought for the Three Shillings a Week upon this Contract. But an Action will lie for the Diet upon the Contract in Law, 9 Ed. 4. 1.

Appor-
tionment of
a Contract

If I be an Artist, and one promise me Ten Pound to teach him my Art seven Years; this Contract is in the making of it perfect enough. But if I die before the seven Years ended, the Money is lost on my side. And if the other pay me the Ten Pound, or secure it by Bond, then it is lost on his side, 21 Ed. 2. 11.

Contract
determi-
ned.

If one promise to serve me a Year for Ten Pound, this Agreement is compleat; but if before the Year expired, he doth depart out of my Service, or Die, or we part by our Agreement, the whole Debt is lost. But it is said, if the Money were to be paid Quarterly, and he serve a Quarter, that he shall have the Quarters Wages, 10 Ed. 4. 18. 10 H. 6. 25.

Part 2.

If a Contract be for Twenty Bushels of Corn at a price, and that the Buyer shall pay for them, as he doth fetch them; this is a good Contract, and the Party must pay for it, as he doth fetch it, or
the

the Seller may refuse to deliver it, Dyer 30.

A Lease Parol of Land for years, yielding a Rent, is a perfect Contract, that hath Quid pro quo, and a good Consideration on both sides, Kelw. 69.

If the Contract be to have for Cattel Sold, Ten Pound, if the Seller do such a thing, otherwise Twenty Pound; this is a good Contract, and certain enough, Perk. Sect. 712. 714.

If I Sell one Wares for Twenty Pound, to be paid when they are delivered; this is a good Contract, and when they are delivered, and not before, the Action will arise upon it, Fitz. Debt. 56.

If I Sell one Wares for Twenty Pound, to be paid when they are delivered, and not before: This Contract is entire and perfect, Fitz. Debt. 56. And if it be that the Seller shall bring and deliver them at such a place, they must be delivered at that place, Fitz. 144.

If I Sell a thing to another, and no price is agreed upon, and he take the thing into his hands, the Contract it seems is good. And if it be Wine, or any such like thing, the certain price whereof is known, and set by Law, that the Seller may sue for that Money in certain. But that in other Cases the Plaintiff must suppose in his Suit for his Money, that the Buyer promised to pay as much as the thing was worth; And he must Aver it to be worth so much in certain, Trin. 3. Jac. B. R. Contract
property
altered.

Cour.

Averment

If I lend one Money, and thereupon he Enfeoff me of Land, and by Agreement, I am to have the Profits thereof till he pay me the Money; this Contract is compleat, and it seems whiles I have the Land, I may not sue for the Money, Fitz. Debt. 100. So if one have a field of Corn, and

and agreeth with me; that I shall have all the Corn there for Twenty Pound to be paid at Michaelmas next, Co. 4. 92.

Trespass.

If A. Sell Cloth to B. for Ten Shillings, and B. takes away the Cloth against the will of A. in this Case A. may have Trespass against him for it, if the Money be not paid. And if A. Sell Cloth to B. for Ten Shillings, in his Election to make it a Bargain, or not; in this Case if he will he may keep his Cloth till B. pay him; and if A. say nothing, but suffer B. to take it away, A. may make it a Bargain if he will, and bring an Action of Debt for his Money. And

Debt.

Bargain
perfect.

If I offer Money for a thing in a Market or Fair, and the Seller agree to take my offer, and whiles I am telling the Money as fast as I can, he doth Sell the thing to another; and where-upon such an Offer and Agreement that he shall keep the thing till I can go home to my House to fetch the Money; in both these Cases, especially in the first Case, the Bargains are perfect, so as the Seller may not Sell the thing to another, and upon the payment, or tender of the Money by me, and his refusal thereof, I may take the thing Bought, or if he refuse to let me have it, I may Sue for it, Dyer 29, 30. 14 H. 8. 19. 9 H. 7. 21. 21 H. 7. 6. 10 H. 7. 9. Plow. 432.

Sale of the
same thing
twice.

If I Sell my Horse to one first, on Condition that he pay me Five Pound at a Day, and before the day I Sell him to another; this second Contract it seems is void, albeit I be not paid my Money, and that I Seize my Horse again, Plow. 432.

Of Trees.

If the Husband Sell the Trees from off his Wives Land for Money, and the Buyer doth Cut and Carry away part of them, and the Wife die before

before he Cut the rest; by this the Contract is not gone for that which is past, but the rest of the Money must be paid: But it is gone for the Trees, for the Buyer may Cut no more Trees: And yet if the Contract were to Cut them at such a day, and not before, and he Cut some of them before the day, and the Die before the day; in this Case the Contract will be Void, and he cannot be forced to pay any of the Money, 18 Ed. 4. 6. Broo. Contract 26.

If one Sell me a Lease of Pears, and Goods, by-one Contract for an entire Sum of Money, and the Goods be taken away from me by the right Owner, before the Money be paid, yet the Contract is good, and I must pay all the Money. So if I Sell two Horses for Ten Pound, and one of them is another mans, who take him away; yet the Contract is good, and he will recover the Ten Pound: But he will have his Action of the Case against me, for Selling of another mans Goods, 7 H. 7. 4. Co. 3. 22. 18 Ed. 4. 6. 9 Ed. 4. 11. 12 H. 8. 13.

If A. and B. agree that A. shall lend B. Twenty Pound for a time, and that for this, that B. shall Mortgage such Land upon Request to A. and after A. upon Request of B. deliver Wares to C. for part of this Twenty Pound, and hereupon B. doth accept it for part of the Money, or to Redeliver it to A. upon Request, this Contract is perfect enough, Old B. of Entries 4.

If A. owe B. one Hundred Pounds, and C. being a Cloth-worker to A. having Cloths of his in his House, and they three agree that B. shall have these Cloths for his Money, and that C. shall deliver them; this is perfect, Adjudged. So if one posses-

possessed of a Field of Corn, agreeth with another, that he shall have all the Corn there for Twenty Pound to be paid him at Michaelmas next; this is certain enough, Co. 4. 92.

And upon these, and such like Contracts as these, wherein Property is altered upon a Sale, if there be any thing Executory in it, this Action will lie.

SECT. VI.

2. For the Consideration of it; and what shall be said a good Consideration in Law, in such a Contract or Assumpsit to ground this Action upon, or not.

Consideration,
what.
Part 1.

Consideration is said to be somewhat of Profit and Benefit to him to whom it is done, by reason of the Charge or Trouble of him who doth it, 9 Ed. 4. 19.

And as touching the Cause, or Consideration of a Contract, or Assumpsit, it is to be known,

1. That every Promise must have a Consideration in it, and that must be of some Benefit to him that makes it, or some Disadvantage to him to whom it is made, March. Rep. pl. 243.

2. That there are these things Requisite to make the Cause or Consideration of an Assumpsit good. 1. It must be Valuable, that is, it must import some Gain to him that makes the Promise, or (at the least) some Loss to him to whom it is made, or both. But the proportion of the Value is not Considerable; for a Penny, or a Pint of Wine will as much Engage a Contract, and bind an Assumpsit of a Thousand Pound value, as a Consideration of Five Hundred Pound. But in that

that Case the Jury will probably give Damage as the Cause is. And the Law is all one in this, tohere the Contract is in Writing without Seal, or a Writing Sealed, but not Delivered, and tohere it is by Parol only. But if it be in a Writing Sealed and Delivered, and so becoming a Deed, the Consideration is not at all material, Aobb. Rep. pl. 67. Trin. 7. Jac. Friends Case. Co. 10. 76. 102. Bro. Action, &c. 40. Fitz. Debt 126. And yet if there be two parts of the Consideration, and one of them is Valuable, and the other not, it is good enough. But if it be in a Non-Assumpsit that is pleaded to the Action, both parts must be proved, or the Action will fail, M. 4. Jac. B. R. Lees Case.

2. The Consideration must be lawful; for if the Consideration moving the Promise, be either malum in se, or malum prohibitum, there it will be all Void. And yet if part of the Consideration be lawful, and part unlawful, it may be good, Dyer 359. Co. 10. 102.

3. The Consideration must also be possible, or it will not be esteemed good.

4. If the Consideration be Executory, it must be fully pursued and performed, before the Action can be brought, 9 H. 7. 13.

If the Contract be by Word of Mouth, or by a Writing not Sealed and Delivered, if there be no Consideration, or no good Consideration in it, it is of no Effect at all. And therefore if a man do so sell to me his Horse, or other thing, and I give him, or promise him nothing for it; this is Void, and will not alter the Property of the thing. But if one sell me a Horse, or other thing for Money, or other valuable Consideration, and the thing

Considerations valuable, or not.
Property.
Change by Bargain and Sale.

thing is to be Delivered to me at a certain Day, and by our Agreement a day is set for the payment of the Money, or all, or part of the Money is paid in hand; or I give Earnest Money (albeit it be but a Penny) to the Seller; or I take the thing Bought by Agreement into my Possession, where no Money is paid, Earnest given, or day set for the payment; in all these Cases there is a good Bargain and Sale of the thing, and the Property is altered. And in the first Case I may have an Action for the thing, and the Seller for his Money; In the second I may Sue for, and Recover the thing Bought; In the third I may Sue for the thing Bought, and the Seller for the residue of the Money; In the fourth Case, where Earnest is given, we may have Reciprocal remedies one against another. And in the last Case the Seller may Sue for his Money.

Trespas.

If A. sell Cloth to B. for Ten Shillings, and B. take away the Cloth against the will of A. before the Money is paid, or any Agreement, when, or how it shall be paid, in this Case A. may have an Action of Trespass against B. for it.

Debt.

And if A. sell Cloth to B. in his election to make it a Bargain, or not; in this Case he may if he will keep his Cloth till the other pay him his Money. And if A. say nothing, but suffer B. to take it away, he may make it a Bargain if he will, and bring this Action of Debt for his Money.

And if I offer Money for a thing in a Market, in a Fair, or Market, and the Seller agree to take my offer, and whiles I am telling the Money as fast as I can, he doth sell the thing to another: Or when I have bought it, we agree that he shall keep it until I can go home to my House

to

to fetch the Money; in both these Cases, especially in the first of them, the Bargains are good, so as the Seller may not sell the things afterwards to another. And upon the payment, and so also upon the tender and refusal of the Money agreed upon, I may take or recover the things Bought, Dyer 288. Co. 11. 48. Plow. 308, Dyer 29. 14 H. 8. 19. 9 H. 7. 21. 10 H. 7. 6. 21 H. 7. 6. Plow. 432. Doct. and Stud. Chap. 4.

If one buy of me a Horse, or other thing for Money, and no Money is paid, nor Earnest given, nor day set for the payment of it, nor the thing is delivered; in this Case no Action will lie for the Money, nor for the thing Sold, but I may sell it to another if I will, Plow. 309. 302. 11 H. 4. 33. So if one promise to give, or do for another somewhat for that which is past; as because he hath builded a House, or because he let his friend have Wares, or because his friend doth owe to the Party Money, and that if he pay him not, that he that makes the Promise will pay him, all these are void Promises, and will raise no Action, Doct. and Stud. 105.

Assump-
fits void.
Nudum
pactum.

If I promise to one, that in Consideration he hath delivered to me Twenty Crowns, that I will deliver them to him again; no Action will lie for this. But if he deliver them to me first, and thereupon I promise to Re-deliver them; an Action may lie for this, Adjudged.

If I promise to one without any cause, to give him Twenty Pound, to make a new House, or towards his Losses by Fire, or the like; no Action will lie for this, Plow. 308. 17 Ed. 4. 4.

If I. S. owe me Ten Pound, and another come to me, and tell me, he will be my Pay-master for the

the

the Ten Pound, and pray me to take him for my Debt, but gibes me nothing for it, this is also is nudum pactum, ex quo non oritur Actio. Fitz. Debt 126.

Confide-
ration va-
luable, or
not.
Part. 2.

But for the further opening of this about a valuable Consideration, take these things. That for the understanding of this point, this first of all is to be known. That to do these, and such like things as these that follow, are held to be sufficient Considerations in a Contract or Promise to raise an Action upon them (that is to say) To pay or promise Money, to deliver, or lend Money, Lib. Entr. fol. 1, 2.

To give, sell Land, or deliver a Horse, or any other valuable thing.

To forbear, or delay a Debt, or other thing due, or Action to recover it, Croo. 2. 47.

To suffer another to enjoy his House, Land, or use his Goods, B. 9. Jac. B. R. Coventries Case. Bullstr. 1. part 38.

To keep a mans Horse, or other Goods safe, Old B. of Entries 9.

To ear Land, build a House, sollicite a Business, or any such like work for another man, Kelw. 69.

To pay another man his Debt, or deliver his Goods without a Suit, either for himself that doth it, or for another man, Croo. 1. 198.

To be bound as a Surety with another, to do a thing for him, Mich. 9. Jac B. R.

To enter into an Obligation.

To make an Estate of Land, or to Surrender, or Release an Estate in Land, Plow. 3c. Kelw. 69. 77.

To Marry with another, a Child, Whistwoman,

What
things to
be done
by the
considera-
tion of an
Assumpsit,
are good,
or not,

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02 Friend, New B. of Entries fol. 2. Stiles Rep. 295.
Not to put in a Caveat against the Probate of
a Will.

To stand to an Award.

To Enlarge one out of Prison, Pasche 9. Jac.
B. R. Bassets Case.

For a Minister to take a Journey to Marry any
woman, Brownl. 2. part 274.

For a Physitian to take a Journey to Cure a
Man's body, Brownl. 2. part 274.

To lend one Money for a time, Yelverton
37. A pint of Wine, Trin. 7. Jac. Friends
Case. And finally, any thing, which for the
matter of it may be good in the Promise it
self, may be good in the Consideration of a Pro-
mise. And although it be such a thing as the
Party promising hath no Benefit by it at all, yet
if the Party to whom it is made have any Damage
or Burden by it; the Consideration may be good,
Brownl. 1. part 42. 2. part 274. 277. 269. But
if there be nothing of Profit, nor appearance of
Profit on the one side, nor of Appearance of Bur-
den, nor Charge to the other side; as where the
Consideration is only to deliver a man to his own
Writings, or to pay him his own Debt, after it
is due, to deliver him his Bond when he hath paid
the Money upon it, to deliver goods, only to de-
liver them over to another, or the like; these Con-
siderations are not good, and therefore when they
are the Causes or Motives of the Assumpsits, they
are void, and no Action will arise upon them,
Croo. 1. last publisht 194. 380. and in many of
the following Cases.

If my Parson agree with me that I shall keep
my own Tithes this Year, if this be after the

F

Corn

Parson and
Parishoner
for Tithes.
Part.

Corn is sown, the Contract is good. And so some hold that a Contract between the Parson and one of his Parish, to keep back, and retain his Tithes in his hands for Three or Four Years; that this may be a good Contract. But a Contract between them for the Tithes of a Third man cannot be good by Word of mouth, without Deed. And some hold of a Contract made between them for the Parishioners own Corn, that if the Contract be before the Corn is sown, or for longer time than a Year, that it is not good, unless it is made by Deed. And it seems to be agreed for Law, That a Contract made by Word of Mouth with a Parishioner for the keeping back of his Tithes for so many Years as he shall be Parson, is not good, for any way, but by way of Retainer for a Year, Brownl. 2. part 11. 17. Owens Rep. 103. This Action it will not lie for a Rent, without some special promise made about it; nor for a Debt on a Specialty, or Record, Croo. 2. 598. Nor will this Action lie upon a Deed sealed and delivered, Croo. 2. 506. Croo. 2. 664. 658.

For a Rent

For a
Lease for
Years.

If one promise me in Consideration that he may have and enjoy quietly the Harbage of such a Park for three Years, that he will pay me Ten Pound; this is a good Consideration and Contract, on which this Action may lie, Croo. 1. 250. Sir G. Maufell. 17 Jac. Adjudged. And yet if I let Land to one for a Year, who doth promise to pay me for this Lease at the Years end Twenty pound, not this Action, but an Action of Debt lieth for it, Croo. 1. last published 786.

About 20
Escape.

If one keep a Common House next to the Prison, and he in Consideration that I will suffer him to have the keeping of a Prisoner, by which he

he may utter his Meate and Drink, &c. promise to keep him safely, and save me harmless from all Escapes; this is a good Consideration and Promise, Croo. 1. last published 123, 124.

Save harmless.
By way of Retainer.

If one owe me Twenty Pound, and I Buy of him Goods to the value of Five pound, and it is agreed betwixen us he shall keep up his Five pound towards his Twenty pound, it is said, that this will not Bar him of his Five pound, if he Sue for it, Fitz. Debt 56.

So if one promise me, that I shall Retain the Rent I owe him, for Money he is to pay me, it seems this will not Discharge so much, nor may I plead it in Bar to an Action for the Rent. But I may bring an Action upon the Promise, if there be any Consideration in it, Mich. 9. Jac. B. R. Jarvis Case.

Assumpſit.

If one promise to me that have a Term of Years in Land, that if I be Ejected by him, or any other, during the Term, that he will pay me Forty Seven pound; this is a good Promise and Consideration in it self. But in his Suit for breach thereof, he must set forth by whom and how he was Expulſed, Croo. 1. last published 179.

If one Arrested at my Suit upon Process, in Consideration that the Plaintiff will let him go at Large, and give his Warrant to the Bayliff, to let him at Liberty, assume to appear at the day of the return of the Process, or give to him Ten pound; this is a good Consideration and Promise, Croo. 1. last published 192.

Consideration unlawful.

But if such a promise be made to the Sherif, or to any other to his use, it were not good, being against the Statute of 23. H. 6.

Consideration unvaluable, or Nudum pactum.

If I be to pay another Five pound on a Bond upon

upon the First of November, and he after the day, in Consideration that I will pay it him without trouble, promise to deliver me a Bond, that I. S. is bound to him for Twenty Shillings with a Letter of Attorney to Sue for the Debt; it seems this is not good, Croo. 1. last publisht 194. For there is no Consideration in it to pay his own Money after it is due. So to deliver a man his own Writings, seems to be no good Consideration.

If one have a Suit against my Father, for taking of the Profits of Land in Chancery, and I promise, that if he will surcease his Suit, and can prove that my Father hath taken the Profits, &c. that I will answer the Profits; it seems no good Consideration; for it is no reason if my Father took the Profits, that I who am neither Heir or Executor to him, should answer it, it being but a personal wrong. And it is Adjudged for the Defendant, Croo. 1. last publisht 207.

If I be Bail for anothers Debt in the Kings Bench, and the Creditor recover his Debt there of me, as he may, and then he doth in Consideration of this, promise to me the principal Obligation, and a Letter of Attorney, to Sue it against the principal Debter; this is no good Consideration, and therefore not a binding Promise, for he hath done nothing to merit it, but what he was bound by Law to do, Croo. 1. last pblisht 538.

If I by a Word or Promise undertake to keep a mans Goods safely till such a time, and he give me nothing for it, and after I refuse to take them, no Action will lie against me for this. But if I undertake and receive them, and they be afterwards Impaired, or Lost, by any neglect of mine, it is otherwise. And yet if I take them into my

Custos

To undertake to
keep
Goods.
Part 4.

Custody with this Caution, that if they be lost, I will not answer them; or that I will keep them as my own, or the like, there I shall not be Chargeable, Co. 4. 38 84.

If A. owe me a Hundred pound upon Bond, and B his Brother being a Lawyer, in Consideration that I will at his Instance deliver up my Bond to be Cancelled, and lend him a Hundred pound more, and trust him only with the making of the Assurance of the Two Hundred pound, and use no other Council in it, that he will provide such an Assurance for it, by which I shall have more Advantage of A. if he make default of payment of the two Hundred Pound, then I had for the One Hundred pound. And B. knowing the Land was in A. in Tail, the Remainder to B. grants a Rent Charge out of it to me, by which, &c. this is a good Consideration and Promise; and if I perform the Consideration, I may have this Action for the Deceit, Cro. 1. last publisht 246, 247.

To make an Assurance of Rent, as of Council,

Deceit.

If my Debtor, who hath Statutes from other men, deliver them to me towards my Satisfaction, and Die; and one that is neither Executor, nor Administrator, request me to deliver him the Statutes, and he will pay me the Debt; this is a good Consideration, Hobb. Rep. pl. 7. And if the Terre-Tenant promise me Money to Assign and Deliver up a Statute I have upon the Land by way of Discharge; and he do so, this is good. But if it were to deliver it by way of Assignment to a stranger, contra. for this were an unlawful Consideration, Pasche 38. Eliz. B. R. Berrow and Gray.

To deliver up Statutes I have upon his Land,

Assignment,

If I be bound to one in an Obligation of Forty Pound, to pay Twenty Pound, and I, because

Consideration unlawful,

I conceive the Money is paid, threaten him with a Suit, and take out a Subpena, and he, in consideration, I will forbear my Suit, promise to deliver me up my Bond upon request: this is good, and I may have this Action upon it, Adjudged, and affirmed in a Writ of Error. Croo. 1. last published 768.

Forbearance.

Pleading.

If a Statute be forfeit by the Assignment of a Lease, and the Conusor doth promise the Conusor, that if he will not sue it, he will pay him a Hundred Pound; this was adjudged good, and that without shewing how by the Assignment the Covenant for the performance wherof the Statute was given was forfeit, Bullr. 1. part 262.

Forbearance of a Debt discharged.

If A. and B. be bound to C. in a Bond jointly and severally, and C. do release to A. And after B. and C. talking together of the Debt, B. in Consideration that C. would forbear him, till such a day promised to pay him; this is no good Consideration, for by the Release to one, the other is Released, and so there was no cause of Suit, Marches Rep. pl 243.

Forbearance a little time.

If one that owes me Money, doth promise, that if I will forbear him for a little small time (to wit) for some fortnight, or thereabouts, that he will pay me, that this is good. But that if this Explanation of some fortnight, &c. had not been added, it had not been good, Bullr. 1. part 41.

A promise against a promise.

One Promise may be a good Consideration of another Promise. As where I am Indebted to another Twenty pound by Bill, and he assume to me to deliver me up my Bill, and I assume to him to procure two sufficient Witnesses to be Bound for the Twenty pound. And in this Case he that sues for not bringing men to be Bound, need not shew

shew that he delivered up the Bill, &c. Croo. 1. last publisht 543.

If a Testator were Indebted to me Twenty pound on a Bond, and the Executor promise in Consideration, that I will give him Day for one Year, that he will pay; this is a good Consideration, and an Action will lie upon the Promise, Croo. 1. last publisht 643, 644.

If one be Indebted to me on an Obligation, and I Assign the Debt to the King, and after the Obliger, in Consideration that I will forbear to procure any Process against him for the Debt, until Hillary Term following, promise to pay me the Two Hundred pound; this is no good Consideration, for no Benefit, or Ease to the Defendant. So resolved by all the Judges and Barons in the Exchequer Chamber in a Writ of Error, Croo. 1. last publisht 654.

If I Sue another, and we are at Issue, and he in Consideration that I will stay from further prosecuting the Suit, promise to pay all my Charges and Expences therein, and I do forbear; this Action will lie, for the Consideration is good, albeit it say not how long he should stay his Suit, Croo. 1. last publisht 868, 689.

If one promise to Serve me for Wages agreed on, and for Six Pence given in Earnest, and do not, I may have this Action against him, Bridgman 119.

If one promise to Build me a House, make me an Estate, and to do any such like thing, and there is nothing given, or promised by me for the doing of it; no Action will lie upon this. And where one doth promise me to do a work by a day, and it is not Agreed what he shall have for the doing of it; no Action will lie upon this. Part 5. Reciprocal Action.

ing of it, or when; or if it be agreed, no part of the Money is paid; in this Case I may not Sue for the Work not done, nor can he Sue for the Money; but if the Promises be mutual, for the Work, and the Recompence, we may have mutual Actions, the one of us against the other, Dyer 21. 21. Plow. 25. 3 H. 6. 36.

Nudum
pactum.

If the Obliger pay the Money to the Obligee after the day, and thereupon the Obligee promise to deliver the Bond, and doth not, no Action will lie for this, nor hath the Obligee any Remedy for it, but in Equity.

Equity.

Promise
to deliver
me my
Goods
lost, good
or not.

If I lose my Mastiff, Hound, Grey-Hound, Spaniel, or Tumbrel, and one that hath him by Trover, doth promise to deliver him to me upon Request; this is such a Case as will give ground for this Action, Croo. 1. last published 125. And yet if I promise to another any thing to deliver to me mine own Writings; this is no good Consideration, Yelverton 128.

If one in Consideration that a Stranger shall Surrender a Lease to him at my Request, and that I will Cancel such an Indenture, promise such a thing to me; this is good, and I may have an Action upon it, Pasche 9 Jac. B. R. Collins Case.

Consideration of
forbearance.

If I be in Debt to I. S. and I deliver Goods to A. B. to pay I. S. and I. S. doth require the Debt of A. B. who doth desire to forbear him Three Weeks, and he will pay him; this is a good Consideration, and Assumpsit to give Action, Williams Case. M. 7 Jac. B. R. But in this Case he shall recover Damage only for forbearance; for the Debt is still Recoverable of me, as it was before, Mich. 4 Jac. Lees Case. B. R. So if A. owe to me Ten Bushels of Corn, and deliver them to B.
to

to deliver to me, and B. pray me to forbear till Michaelmas, and he will pay me the Corn, or the worth of it; this is a good Consideration and Assumpfit, Mich. 18 Jac. B. R. Jacksons Case.

An Assumpfit, or Agreement to do a thing upon Consideration, that he to whom the Promise is made shall surrender an Indenture to him. is a good Consideration to ground an Action upon the Breach of it, although he to whom the Indenture is surrendered, do take no Estate by the Indenture, Mich. 23. Car. 1. B. R.

If the Obliger pay the Money to the Obligee, and the Obligee promise to deliver up the Bond, and do not; no Action will lie for this, for the Consideration is not good, nor hath he any Remedy but in Equity.

To surrender an Indenture.

To deliver up a Bond when the Money is paid.

A. grants his Term to B. if C. will agree, B. promiseth Twenty pound to C. for his Assent; this is a good Consideration to ground an Action for the Twenty pound, Trin. 12. Jac. Co. B. Greisly and Louthen.

An Assent.

If I promise to a Woman having a Husband, who hath a Daughter and Heir to Land, that if she will give her consent that I shall have her Daughter, I will pay her Ten pound; this is a good Consideration, Adjudged. Hob. Rep. pl. 20.

Marriage. Consideration valuable.

If a Bayliff pay the Debt, and hereupon the Plaintiff promise to deliver to him the principal Obligation, and a Letter of Attorney to Sue the Principal; this is no good Consideration to raise an Action, Adjudged in the Exchequer Chamber 38, 39. Eliz. Dixou and Addams.

Consideration unvaluable.

If one promise me to pay me as much as I. S. (who is in Prison at my Suit) doth owe me, if I will deliver him; this is a good Promise, and

I

Forbear-
ance.

Count.

I may have this Action upon it, 27 H. 8. 24.

If I have a *Writ* against I. S. and I. S. knowing of it, doth pray me to forbear to go any further in that Suit, and he will pay me Twenty pound; this is a good Consideration, Hobb. Rep. pl. 278. And I need not to shew any Cause of the first Action. But if the Consideration be to forbear, and say not how long; this is not good, as some say. And yet see H. 21. Jac. in Assumpsit; for that the Defendant in Consideration the Plaintiff would forbear to sue one I. S. upon an Obligation of Eighty pound, promised to pay him the Debt, and shewed in his Court that he had forborn him a Year and a half. And there it was held, that a Consideration to forbear to sue such a one for such a Debt, is a good Consideration, and shall be intended a Total and Absolute forbearance. And that if the Defendant paid it before upon this Promise, and after the Plaintiff sue for the Debt, the Plaintiff is Chargeable in an Action of the Case; for it is an Implied Promise in the Plaintiff, that he should forbear his promise totally, Croo. 2. 683. Hobb. Rep. pl. 287.

But if one owe me Money, and he himself, or another on his behalf promise me, that if I will forbear him [or not sue him till such a day] or not go forwards in my Suit begun against him till such a day, that he will pay me; either of these are good Considerations to give an Action, Coo. 9. 90 94. New Book of Entries, fol. 8. 10. 47. Sir Moyl. Finches Case. M 4. Jac. B. R. But if re vera no Debt were Originally due; some doubt whether the Action will lie or not. So if the promise be by an Executor that hath no Assets

in

in his hands, Co. 9. 900 94. Bolstr. 41: 45.

If A. lease to B. rendring Rent, paying out Rents, and making Reparations, &c. And the Lessor in Consideration hereof both promise Descendere & sustentare status & possessionem of the Lessee, Quiete & pacifice absque interruptione; this is a good Consideration, and amounts to as much as if he had said, he should quietly enjoy it, Mich 7. Jac. B. R. Gamble and Terrell, Survey of the Law 92.

If one in Consideration of a Pint of Wine given by me, promise to assure me Land by a day, and do not, I may have this Action upon the Assumpsit, Adjudged. Friends Case. Trin. 7 Jac. B. R.

If one retain me to be his Solicitor, for the Prosecuting and Defending of some of his Causes, and promiserh to give me so much; this is a good Consideration, and lawful, and this Action will lie upon it, Croo. 1. last published 868.

If I Buy a Hozle of another for Cozn; this is a good Contract, and the Consideration must be performed in Cozn, not in Money, Fitz. Debt 68.

If one promise to me in Consideration I deliver him Forty pound, to Repay me such a day; this is a good Promise and Consideration, Croo. 2. 587.

If an Executor or Administrator of one that did owe me Money, in Consideration thereof, and that he hath Assets in his hands, assume to pay me such a day; this is a good Consideration to make the promise Actionable, especially if I grant any forbearance in it. But if in the Case there be no Debt Originally due, or the Party hath not Assets to pay it; some say no Action will lie upon the

The Forbearance of an Executor of a Debt due from the Testator. Part 6. Assets.

the Promise, *Coo. 9. 93 94.* But Justice Hutton at Saram's Assizes, 21 Jac. held, that the Action will lie, though there be no Assets in his hands that make the Assumpsit, especially where he saith, he hath Assets, albeit he hath no Assets.

And so was it held in Barnes Case, Pasche 9 Jac. *B. R. per Curiam.* If an Executor owe me five pound for the Testator, and he Buy of me Six Barrells of Wier, and in Consideration hereof, promise to pay me for both; this is a good Consideration for both, to Charge him *De bonis propriis*, *Trin. 37 Eliz.*

Count.

Forbearance.

Cook and Wheelers Case. But in these Cases the Plaintiff is (it seems) to shew in the Count the Cause of the first Debt, what it was. But others hold the Contrary, *Croo. 2. part 206, 207. Croo. 1. 3. 21.* The Executor in Consideration that the Plaintiff would forbear his Debt, till probate of the Will, promised payment; this was held good. So if he acknowledg the Debt due from the Testator, and pray forbearance till such a time, and promise then to pay it, and the Plaintiff do forbear; this was held Actionable. Whether he had Assets, or not, and that in this Case the Plaintiff need not to aver he hath Assets, *Bulstr. 2. part 278. Croo. 2. 47. Croo. 1. 82.*

Consideration not valuable.

To let a man have his own Goods,

If one in Consideration of a Debt upon Arrearages of Account promise to pay it; this is not good. But if one in Consideration of Cloths delivered to him, promise to pay Money; this is good, *Croo. 1. last publisht 537.*

If one in Consideration, I will let him have Goods of his out of my House, promise any thing; this is a good Consideration to make good the promise, *Croo. 2. 502.*

ap. 4. about a Contract, or Assumpsit.

109

Hut. If one promise to me in Consideration, I will
t the Debt he or another Owes me a little
in his life; or in Consideration that I will a little
hereby my Suit I have against him, he will pay me;
lets this is not good, Croo. 1. last publisht 19.

Jac. If one in Consideration that I will stay my
Proceedings in a Suit of Law I have against him,
Te. or ever, or for some certain time, promise to do
ear, any thing, this is a good Consideration. But if
me the Consideration be, in Consideration that I
to would forbear Paululum temporis only; this is
liz, not good, but uncertain, Trin. 23. Car. 1. B. R.
he Stiles Regist. 3. 106, 107. The same Law is up-
he on a Strangers promise to me, Coe. 9. 94. But
rg then it must be shewed that I did agree to it, Mich.
o. 39 Eliz. Coe. B. Milwards Case. And then the
at Count must shew how the Debt grew due, Coe. Counr.
e 10. 77. And yet A. declared, that B. was Indebted
d to him Twenty pound, and shewed not how
e long, and that the Tenth of September, 7 Jac. he
promised, if the Plaintiff would not Arrest him,
but forbear till the 21 of September, he would pay
him, and shewed that he did forbear so long And
there it was held, That where the Plaintiff doth
Count for the forbearance for a certain time, there
it is good, without shewing when the Debt grew
due, otherwise where the forbearance is for a time
Uncertain, Trin. 9 Jac. B. R. Dean and Nabic.
Survey of the Law 90, 91.

Incertainty.

To stay
Suits in
Law.

Forbear-
ance.

If an Administrator desire to be forborn such a Pleading.
time, and he will pay the Debt; this is a good
Assumpsit; and the Plaintiff shall not need to set
forth that he hath Assets, for that shall be intend-
ed. But it may be given in Evidence, and if the
Defendant hath fully Administred, and hath no-
thing

Forbear-
ance.

thing left, he may shew it, and then he will not be Chargeable, Co. 9. 90, 92, 93, 94.

If one declare that the Intestate was Indebted to him a Hundred pound, and the Administrator, in Consideration thereof, and that the Plaintiff would forbear him for a reasonable time, promised to pay it, and it was Adjudged for the Plaintiff, and that forbearance for a reasonable time is a good Consideration, because the Court may Judge of it. But that forbearance Paululum temporis is not good, Trin. 14 Eliz. B. R. Lingil and Broughton. Survey of the Law 90, 91. And although the Creditor do forbear half a Year after, this will not make the Assumpsit good, Cro. 1. last publisht 19.

Connt.

If the Count be thus, That where A. was Indebted to him Thirty Two pound, for which he Sued A. and that it was agreed between him and A. to stay the Suit, and if he paid it not before Michaelmas, he should give Security; That in this Case he need not shew how the Debt grew due, for the forbearance, and not the Debt is the Cause of Action. But otherwise it is where the Testator is in Debt, and promisseth, for there the Debt is the Cause of Action. 2. That he need not shew he did surcease his Suit, because the Agreement is Reciprocal. But if the Assumpsit be this, That A. in Consideration that the Plaintiff shall surcease his Suit, promisseth to pay the Debt, there he must shew that he did surcease, Pasche 14 Jac. B. R. Fullers Case. Survey of the Law, 91.

Forbear-
ance.

If W. be Indebted to B. and he deliver goods to L: to pay him, and L. prays D. to stay two or three Days, and he will pay him, but payeth it not; in this Case the Contract is good, and B. may

may Sue this Action against him upon it, Mich.
7 Jac. B. R. Brand and Litter. Survey of the Law 92.

A. doth pledg Goods to B. and that if A. pay not
such a day, B. shall have the Goods. After this,
and before the Day, &c. C. requests B. to forbear
till another day, and he will pay the Money, and
doth not; in this Case B. may Sue him upon this Detinue.
promise; for if C. pay the Money, he may have
a Detinue against B. for the goods, Trin. 13 Jac.
B. R. Caper and Dickinson. Survey of the Law, 92.

If I have a Suit against a Man for a Marriage-
Portion, and he in Consideration that I will for-
bear my Suit, doth promise to pay me a Hundred
pound, and to deliver up a Bond of Forty pound,
&c. to be Cancelled; this is a good Consideration,
Bulstr. 2. part 41.

If one promise that upon the forbearance of such
a Debt, that he will pay it, and he be not Charge-
able with this Debt, that is supposed to Sue, no
Action will lie upon this Promise. As where a
Woman is an Executrix to pay Legacies, and she
Die, and the Goods are in the hands of her Hus-
band, and he supposing himself Chargeable with
it, doth promise to the Legatee upon forbearance
to pay it; this is not a good Promise, Bulstr. 1.
part 44, 45.

If one owe me Money, and he promise me that
in Consideration that I will agree to give further
day for the Money he owes me for Six Months, he
will Secure it to me; this is no good Considerati-
on; for he may agree to give day, and Sue after
notwithstanding, M. 7 Jac. B. R.

If one be Bound by Obligation to me to pay
I. S. Money such a day, and the Obliger promise
to I. S. that if he will forbear him till such a day,
that

that he will pay him; this is no good Consideration, for I. S. had no Cause of Suit against him, per Justice Bridgman.

If one promise to me after his Dog hath killed my Sheep, that if I will forbear to Sue him, he will recompence me the first of May; this is a good Consideration, and liable to Action upon the Promise, Croo. 1. 81.

If one in Consideration that I will be bound for him, promise to save me harmless; this is a good Consideration and Promise, Pasche 9 Jac. B. R. Boyuton and Vaughan. Old B. of Entries 11.

To save
harmless
one that is
bound for
me.

Part 7.

If A. be indebted to B. and A. prays C. to be Bound to B. for the Debt, and he will be bound to C. &c. C. is bound to B. &c. A. refuseth to be bound to C. C. shall have this Action against A. for it is a good Consideration, inasmuch as C. is liable to the Debt, Mich. 9 Jac. B. R. Knivet and Piedall. So if I promise to another in Consideration; he will be bound for my friend, I will save him harmless; this is good, Mich. 9 Jac. B. R. Somersbals Case.

Infant.

An Infant borrows Money, B. is bound to pay it at his full Age; and the Infant then doth promise him to save him harmless; this is a good Assumpsit, and the Consideration good; for albeit the Infant be not bound in Law, yet he is bound in Conscience, Trin. 29 Eliz. B. R.

Considera-
tion valu-
able.

If A. owe B. a Hundred pound, and C. being a Cloth-worker to A. have Cloths of his in his House, and they three agree that B. shall have these Cloths for his Money, and C. doth promise to deliver them; this is a good Consideration to bind C. to deliver them, for by this he is Discharged against A. Adjudged. Trin. 2 Jac. B. R. Warder and Chapman.

If

If I demand Ten pound of another, and he promise me, that if I can prove it a true Debt, he will pay me; if I do prove it, as I may in the same Suit for the Debt, this will be a good Consideration; Adjudged. Mich. 18 Jac. Stat, and Mary. Co. 11. 59. 10 Ed. 4. 11. 11. 11. 11.

Proof of a Debt.

If a Scrivener promise me, that in Consideration that I will let him have the putting out of my Money, that he will take good Security for it; this is a good Consideration and Assumpsit, Mich. 7 Jac. B. R. Kellinworths Case.

To have the letting of my Money.

If I deliver one Ten pound to Redeliver to me again, and he do not so; it seems I may not have this Action for my Relief; but I may have an Action of Account. And yet if there be in the Case a promise to deliver it; there, perhaps I may have Relief by this Action, Hill. 37 Eliz. Co. B. Howdels Case. And yet if I deliver one Ten pound to deliver over to I. S. and he promise to pay it to I. S. I. S. cannot have an Action for this; Cro. 1. last publisht 380.

Delivery of Money. Account.

If one in Consideration of a Lease for Years made by me, promise to pay me a sum of Money in gross; I may have this Action for this Money: But if for this he promise to pay me a yearly Rent during the Term; this Action will not lie for the Rent, but an Action of Debt will lie; Lit. Brookes Sect. 452. Fitz. Debt 129. Mich. 8 Jac. B. R. Morgans Case.

Making of a Lease for years.

And yet if I promise another the Verbage of my Ground for a Year, and he promise me Twenty Shillings for it, either of us may have this Action against the other, Adjudged. Mich. 17 Jac. B. R. Sir George Marshalls Case.

Promise of a Rent. Debt.

Reciprocal Actions.

If one promise to me, in Consideration that he

A Former Debt.

is Indebted to me so much Rent reserved on a Lease for Land, that he will pay me by a Day; this is not a good Consideration; otherwise it is if it be for Herbage, or for the forbearance of a Rent reserved upon a Lease of Land, 14 Jac. B. R. Sir George Marshalls Case. Adjudged. Hil. 9 Jac. 1 B. R. Bret and Heaths Case.

Of Land
sold.

Equity.

If one in Consideration of Land Sold by me to him, promise me Twenty pound for it at a day Certain; or if I Sell my Land to another for Twenty pound to be paid to me at a day Certain; in these Cases I may have an Action for the Money, albeit the Land be not assured; for he may Compel me in Chancery to make the Assurance of the Land, 3 H. 7. 14. 2 H. 7. 12.

Of a former Debr
paid.

If I have recovered Five Pound of another by Judgment, and in Consideration of Four Pound paid by him to me, promise him to acknowledg Satisfaction of that Judgment before such a day; this is a good Consideration and Promise to ground an Action upon, Croo. 1. part last publisht 429.

Part 9.
Upon Account.

If two Account together, and one is Indebted to the other, and both promise to pay him such a day; this is sufficient to ground this Action upon, without more, Croo. 2. 69. And so it seems it is without this Promise. And if the Defendant pray the Plaintiff forbearance a little while, with a promise then to pay it, the Case is the stronger, Goldsb. pl. 6 fol. 48. Hobb. Red. pl. 117. Croo. 1. last publisht 707. This Action will lie upon

Insimul
computasset.

Insimul computasset, and this is a good Consideration, upon which to ground it, Trin. 14 Jac. B. R. Cullimore's Case. Survey of the Law, 94. It is a good Consideration, that upon an Account between the Plaintiff and Defendant was found

so

so much in Debt to the Plaintiff, and promised to pay it, Hobb. Rep. pl. 117. And the Plaintiff shall not need to shew for what the Money was due, *Ware's*; &c. Hobb. Rep. pl. 16. Croo. 1. Rep. 82. So that the Defendant was in Debt to him, and in Consideration of his forbearance, such a time, promised to pay it, Croo. 10. 77. See more. Hobb. Rep. 147. 270. and pl. 16. pl. 7. See Chap. 13. A. declared against B. that in Consideration that he had given him time for three Months for a Debt of Ten pound that he owed him, that he would pay it; in this Case it is said to be good, without shewing for what the Debt was, Hobb. Rep. pl. 31. See Chap. 13. and in this Chapter.

Averment

Forbearance of a Debt.

If an Executor or Administrator be Indebted to me, and he pray me to let some Friends call up the Account between us, who do so, and find it due, and thereupon he doth promise to pay me part of it before the next Term, and the residue in a reasonable time after; this is a good Consideration, and if he pay not that part before the Term, I may have this Action, Croo. 2. part 50.

A former Debt. Executor.

If an Infant take up *Ware's* of me, and promise to pay me such a day, but die before the day, and the Executor desires time to forbear my Suit till such a day, intending to Sue, and he will pay me, or give me Security for my Money; this is not a good Contract to ground an Action upon. But if an Infant at his full Age promise to pay a Debt due in his Non-age, this is Recoverable of him, or of his Executor if he die, Croo. 1. 127. last published.

Infant.

If one promise me, that in Consideration I will Marry her, that she will Marry me; this is a

good

good, and binding Contract, and hath in it mutual Assumpſits, on which Actions may lie, Stiles 295.

Upon a
bargain.
Property
altered by
sale.

If one Sell me a Horse. or Goods, by Word of Mouth, and I give him, or promise him nothing for it, this is Void, and will not alter the Property of it. But if one Sell me a Horse, or any other thing for Money, or any other valuable Consideration, and the same thing is to be Delivered to me at a day Certain, and by our Agreement a day is set for the payment of the Money, or all, or part of the Money is paid in hand, or I give Earnest Money (albeit it be but a Penny) to the Seller, or I take the thing bought into my possession by Agreement, where no Money is paid, Earnest given, or Day set for the payment of the Money; in all these Cases there is a good Bargain and Sale of the thing to alter the Property thereof; and in the first Case I may have an Action for the thing, and the Seller for his Money; in the second Case I may Sue for, and Recover the thing Bought; in the third Case I may Sue for the thing Bought, and the Seller for the Residue of his Money; in the fourth Case we may have Reciprocal Remedies one against another; and in the last Case the Seller may Sue for his Money.

Nudum
pactum,

But if one Buy a Horse of me, or any other thing, and no Money is paid, or Earnest given, nor day set for the payment thereof, nor the thing Delivered; in these Cases no Action will lie for the Money, or for the thing Sold, but I may Sell it to another, Plow. 302. 309. So if I promise to pay one Money, to give him a Horse, to build him a House, or the like, and no Recompence

pence is appointed to me for the doing of it; these are void Promises, and no Action will lie upon them.

So if I promise to another Twenty pound, because he is my kinsman, or Acquaintance; this is no good Consideration, but a Nudum pactum, Plow. 302. 309.

If I have an Execution against a man, and promise the Sheriff if he will Execute it, that I will pay him his due Fees, according to the Statute; this is a good Consideration and Promise, upon which the Sheriff may bring his Action, Croo. 1. last published 654.

If one promise me that in Consideration that I will use my endeavour with his Father to assure such Land, that he will give me Twenty pound, if I procure him to make such assurance; this is a good Promise and Consideration; and if I procure him to do it, I may have this Action for the Money, Croo. 1. last published 906.

If one sell me a Lease for Years, for a sum of Money, or for a Rent, this is a good Contract, on which an Action may arise; yea albeit there be a Lease for Life of the Land in being, Kelw. 69. Co. 8. 94. Co. 2. 35.

If one that is Illegally Arrested, shall promise in Consideration of his Discharge thereof, to pay so much; it seems this Promise will not bind, for the Consideration is not valuable, Croo. 1. last published 919.

If I promise in Consideration of a Surrender to be made to me of such Land to pay Ten pound, and a Surrender is made to me. But it is not a good Surrender in Law; this is no good Consideration to give an Action upon the Assumpsit, A Surrender not good. Part 9.

Hill. 37 Eliz. B. R. Sley and Bateman. Croo. 1. last publisht 487, 488.

Forbear-
ance.

If one be in Debt to me a Hundred pound, and for the Satisfaction of it delivered me divers Goods in Specie, to the value of the Debt. And after I call upon him for my Money, and to Sell the Goods to do it, and he in Consideration I will forbear for a certain time, assume to pay me such a day; this is a good Consideration, Adjudged. Yelverton 164.

Land or
Goods
Sold.

If I Buy Land, Trees, or Corn of a man for Money, and he promise to make me an Assurance, or deliver the Trees, or Corn by a Day, and do not so, or Sell it to another; I may have this Action against him, 21 H. 7. 41. Dyer 22. Coe. 10. 130. Old B. of Entries 6.

To serve
another a
Year.

If one in Consideration that I will do all his Commands honestly and truly for a Year, assume to pay me Ten pound; this is good, Popham Rep. 193.

To suffer a
Copp-
hold to
descend.

If I be Seized of Copp-hold Land in Fee, and am in Debt to I. S. a Hundred pound, and lying very Sick, I make W. L. my Executor, and declaring my mind to B. to Surrender it, to the use of my Executor, to enable him the better to pay the Debt, and I. S. (being Heir to the Copp-hold) persuades me not to Surrender, but to suffer the Copp-hold to descend to him, and he assumes to pay the Hundred pound to I. S. This is a good Consideration to give an Action to the Executor, Hill. 9. Jac. Grays Case.

To suffer a
Copp-
hold to
descend.

Upon a
Bargain of
Wares.

If I Buy any Wares of another for so much Money, or promise so much for them, he may have this Action for his Money, March. Rep. 77. 16 Car. 1. B. R.

If

If I have a Recogniſance Chargeable upon Land, and the Terr. Tenant in Conſideration that I will Assign the Statute to him by way of diſcharge, promiſe Money to me; this is a good Conſideration. But if it were to Assign it to a ſtranger, it were not good, for that were maintenance, Adjudged. Paſche. 18. Eliz. B. R. Bar. ow and Green.

Assign-
ment of a
Statute.

Unlawful
conſidera-
tion.

If one be Indebted to me, and for payment thereof deliver me Goods, and after, another man deſires me to deliver him the Goods, and he will pay me the Debt, this is good, Brownl. and Goldsb. 3.

To deliver
another's
goods out
of my pos-
ſeſſion.

If one Executor promiſe to another, that in Conſideration he will forbear to ſoyn in the Pro-
bate of the Will of I. S. and reſeaſe to the other all the Execution of the Will of the Teſtator, to pay to the other Executor ſo much Money when he comes to ſuch a place; this is a good Conſideration and Promiſe, upon which the Party to whom it is made, may have this Action when he comes to the place, Bull. r. 1. par. 185.

Not to
prove a
Will, nor
joyn in
execution.

If one have killed a man, and he pray me to uſe all means to get his Pardon, and I labour much in it. and for this he doth promiſe to pay me one Hundred Pounds upon Requeſt, this is good, Brownl. and Goldsb. 7. 8.

To help a
man to get
his par-
don.

If one be going forth with a Ship in a Voyage, and grant to another the half of his Gain which he ſhall have by the Voyage, and the other in Conſideration hereof doth promiſe that he will be at the half Charge of the Loſſes which he ſhall have by the Voyage, and to pay him the ſame upon Requeſt; In this Caſe the Promiſe was reſolved to be certain and good enough, Bull. r. 1. par.

To grant
one the
half profit
of a Ship.

Of a Debt
already
due,
Conside-
ration un-
valuable.

To enjoy
an Her-
bage.

To forbear
a Relief.

Forbear-
ance of
Suit.

Part 10.

If one in Consideration that he doth owe me Twenty Pounds for Kent, promise to pay it me such a day, this is a good Consideration. And yet if it be in Consideration of the forbearance of such a Debt, this is good, Croo. 1. part 250.

If one promise in Consideration that he may enjoy the Herbage of such a Park for three Years, that he will pay One Hundred Pounds, this is a good Consideration and Promise, Croo 1 part 250.

If I Seize Goods under pretence of a Relief due to me, and the Owner pray me to forbear Suite for it, and promise me that if I will do so, and can make it appear to A. and B. his Brothers, that the same is due, that he will pay me such a day; this is good, Bendlows 180, 181.

If my Husband were Indebted to I. S. and after his Death, I having notice of it, and bring no Executrix to him, and hearing that he intends to Sue me, request him to forbear till Michaelmas, and then promise to pay him, this will not bear an Action; But if I be Executrix to my Husband, it is otherwise, Noys Rep. 81.

The Consideration of a Promise was, so that Daret diem solutionis super se Assumpsit, and did say in this Court, that he had given day, and it was adjudged no good Consideration. But if the Consideration be, Quod cum indebitatus, &c. This is good, for it implies a Consideration in it self, Goldsb. Rep. pl 20

If I and my A. stator have delivered Wares to I. T. and I. H. Ad compotum inde reddend. by I. T. and after this I. T. goeth beyond Sea, and the A. stator Dieth, and then I. T. sends into England one Hundred Binsels of Wood, &c. to satisfie me of my Account; part of this came to the hands of A. B. who delivers

delibers to me a part of it in satisfaction of my Account, &c. A. B. assumed that if I would forbear I. T. for the residue till such a time, that he would satisfy me all that should appear to be due upon the Account; this is a good Consideration and Promise, Noy 8.

If one owe me Money on an Obligation, and I intend to Sue him, and he in Consideration that I will defer the payment of the Money, and not Sue him upon the Obligation for that Debt, doth assume to pay it to me; this is a good Consideration: And deferring here shall be intended all the life time of the Obligated; And that if he Sue him sooner upon the Obligation, an Action of the Case lieth, Noy Rep. 83.

If A. be Indebted to B. in Twenty Pounds, and C. is Indebted to A. Thirty Pounds, and A. in satisfaction of the Debt he oweth to B. assigneth the Debt of Thirty Pounds which C. oweth to him, and makes him a Letter of Attorney to Sue in his Name, and A. and B. do acquaint C. with this Agreement, and C. promiseth to B. in Consideration that he will forbear till such a day, that he will pay him the Money; this is not good: As where Executors that have not Assets, promise to pay a Debt of the Testator. And as where I deliver goods to my Servant to deliver over to I. S. and I. S. promise my Servant, that in Consideration he will deliver them to him, he will give him so much Money, this is no Consideration except they be delivered accordingly, for these are only Authorities countermaindable at all times, Winches Rep. 8. Co. 9. Banes Case.

If I say to one, do not trouble me, and I will give thee so much; this is not good, to give me time, Forbearance without cause of Suit.

time, &c. this is no good Assumpsit. So an Infant within Age promised to pay Money, he makes an Executor, and Dies within Age; the Executor saith to him to whom this Promise is made, forbear and I will pay you, an Action will not lie upon this against the Executor, For the Contract was void, See Chap. 4. Sect 4. part 4.

If the Consideration be to forbear to Sue, it seems this shall be taken but for a time and so not good, but if it be not to Sue, this shall be for ever, and good. And Walmssly held, That if the Plaintiff say, I will forbear to Sue, so you will promise to pay me, and upon this, he doth promise to pay, in this Case he must forbear it for ever. But if the Defendant only speak the words thus: If you will forbear to Sue, I will promise to pay you; and the Plaintiff agrees, and forbears a certain time, he may Sue afterwards, *Owens Rep. 110.*

Incertain-
ty in the
Consideration.

If one doth promise to another, that if he will defer the Payment of a Bond in which A. is bound to him, and will not Implead him upon it, that he will pay him: This is not good, because he doth not say he shall defer it till such a time. One promiseth to pay so much for a Lease at will; this is not good, *Mic. 12. Jac. Kebles Case. Pasche. 8. Jac. Austins Case.* A man promiseth that in Controversation he will forbear another, he will pay it, and no time set, is no good Consideration, *Trin. 38. Eliz.* A man doth promise *Quod non implacitabit*, and avers *Quod non implacitavit*; this for incertainty, is no valuable Consideration. And if there be Consideration at the time, or no Cause of Action, the forbearance afterwards will not make it Actionable. A Consideration to forbear for a little

little time is not good. And yet a Consideration to forbear for a reasonable time, some hold to be good. And so in the other Case, if one hath forborn a reasonable time; But if the Consideration be that he shall never Implead him for the Debt, this is good. And if he do Sue him after for this Debt, the other may have a special Action upon the Case, for Suing of him upon that Cause. And by Dodridge. If an Obligation be forfeit, and I say to the Obligee, do not Sue the Obliger, or do not Implead him, and I will, &c. an Action upon the Case lies against me if I do, Popham 183. Hetleys Rep. 62.

Assumpsit
in Law.

If I Buy of another a Horse for a piece of Gold of Two and Twenty Shillings, to be then paid in hand, and for Eleven Pound to be paid at my day of Death, or Marriage, which shall first happen for payment of which Eleven pound, I shall bring one sufficient man to him to be bound with me to him, and he in Consideration hereof, assumed to deliver the Horse to me, when he shall be requested; this is a good Contract, and the Consideration being pursued, the Promise may be Actionable, not being performed, Brownl. and Goldsb. 11.

Payment
of Money.

If one in Consideration that I lend him Money, Loan of doth promise to pay it to me at a day Certain; this is a good Consideration and Promise, Brownl. 2. part 40.

Money.

If I promise to one that hath a Pawn of mine for a Debt, that if he will deliver it to me, I will pay him the Debt; this is a good Consideration and Promise, Owens Rep. 123.

Delivery
of a pledg.

If one promise me, that if I Marry M. A. with the assent of her Father, that he will give her

Marriage.

her Twenty Pound; this is a good Consideration, Adjudged. Heyley 507

Executor.
Averment
of Assets.

If I Sell Wares to one for Money, and he die; and after I being about to Sue the Executor, he doth own the Debt, and in Consideration I will forbear it till such a time, he promise to pay it; this is a good Consideration and Promise. And in this Case an Averment of Assets is not needful, Bulstr. 2. 278. Nor is it necessary to shew how the first Debt grew due, Bulstr. 2. part 91.

Conside-
ration to
change an
Executor,
&c.
Forbear-
ance.
Paululum
temporis.

In Consideration that the Testator was Indebted, to promise to pay at two days is not good; But in Consideration that the Testator was Indebted, and you will forbear, is a good Consideration. That you will forbear Paulum temporis, is not good, without saying for a day, &c. as is adjudged. Nor is it sufficient in Consideration that the Testator was Indebted, or that he made appear the Debt is due, Hetleys Rep. 1. 8. 11; Coe, 9. 94. and 6. 41. And yet see that in Consideration, that per parum tempus deferret solutionem, was held a good Consideration, Leonards Rep. pl. 80.

Incertain-
ty.

Conside-
ration of a
Jugg of
Beer.

If it be so, there be a Suit in being between A. a Tenant, and B. Lord of a Mannor about Common, and another for a Jugg of Beer, and in Consideration that Palmer having now brought his Action against him, shall Defend their Suit in maintenance of their Title of Common, he doth assume immediately after Judgment given, to pay him half his Costs, or Forty Pound; this is a good Consideration and Promise, Hetleys Rep. 4. 21.

To teach
one a
Scholar.

If I say to a Schoolmaster, teach such a one, and I will give you so much for your pains; this is a good and binding Promise, Bulstr. 2. 278, 279. So if I say to a Mason, build such a House, and I will give you so much Money for it. The

The Defendant in Consideration that the Plain-
tiffs Wife, when she was Sole, would take the
Plaintiff to her Husband, he did promise to assure
her such an Estate in Land for her life, accordingly
she did take him to Husband, and the Husband and
Wife brought this Action. And it was adjudged
to lie. So if one say to a Chirurgeon, Cure such
a one, and I will pay you for your Cure, & De-
liver to such a Servant so many Cloths, for which
if he do not pay you, I will. Bulst. 2. pa 270.
If one in Consideration that I have Delivered
into his hands divers Merchandizes, promise to
pay me so much Money, it seems this is not a good
Consideration, for it may be his own Goods. Her-
leys Rep. 62. But if it were in Consideration
that I had sold and Delivered them, contra.

If one in Consideration of Writings belonging
to mine own Land Delivered to me, make me a
promise, this is not good, for the Consideration
is not valuable to give me mine own Writings,
Owens Rep. 123.

If I promise to a Woman in Consideration that
she marry me, that if after the Marriage she out-
live me, that I will leave her worth a Hundred
pound, this is a good Promise. And by the bet-
ter Opinion, the Inter-Marriage after is not Re-
leased in Law, but shall continue, and the Wo-
man may have Action upon it, Huttons Rep. 17.

If a Statute made to me be forfeited, or I do pre-
tend so, and about to sue upon it, and the Coun-
ty for in Consideration that I will forbear it, promise
to pay me so much, this is good, and my Suit
shall not need precisely to shew how it was bro-
ken, but in some general terms only, Bulst. 2. pa 293.

An Assumpfit will not lie for a Rent, or upon an
Obl.

Marriage,

Cure such
a Sick bo-
dy.

Delivery
of Wares
sold.
Confide-
ration past

Delivery
of my own
Writings.

Marriage,

Extrin-
guishment
of a pro-
mise.

Forbear-
ance.

For Rent
due, or
Obligati-
on.

Obligation, as that where one is Indebted to him so much for Rent, or so much on an Obligation, that he promised to pay him; this will not lie, *Huttons Rep. 34, 35.*

Taylor
to make
Clothes.

If I speak to a Taylor to provide me such things to make a Garment, and assume to pay for it, and the making of it, as it shall be worth; this is a good Promise.

To satisfie
me for a
Sheep kil-
led.

If one hath a Dogg that he knows hath been used to Mory and Kill Sheep, and he hath killed some of mine. And the Defendant in Consideration thereof doth promise to make me Satisfaction, &c. this is a good Promise in it self, and hath a Consideration in it, *Huttons Rep. 106.*

For a Rent
due.

If my Wife have a Rent-Charge for her Life, and the Tenant of the Land Charged, in Consideration that the Rent is behind, &c. promise to pay it to me, this is a good Promise and Consideration, *Leonards Rep. 293. pl. 401.*

Engage-
ment for a
another.
Part 11.

If one in Consideration that I will give Credit to E. C. then his Servant, for any thing that he shall deal for, to his use with me, promiseth that he will see me Contented, that which E. shall deal for with me, to his use any way, when he, after it shall become due shall be requested; this is good. But here must be a Request before any Action can be brought, *Brownl. and Goldsb. 13.*

Forbear-
ance.

If A. owe me Eight Pound Ten Shillings for Beer, and Die, and after his Death, I ask my Money of her, and she in Consideration that I will serve her with Beer, promise to pay me the Eight Pound Ten Shillings, and for the rest of the Beer at such a day Certain; and I do serve her with Beer, and give her time for the payment of Eight Pound Ten Shillings, and for the other Beer.

Sale of
Goods.

For Bread
and Beer.

Chap. 4. about a Contract, or Assumpsit. (111)

Beer delivered to her; this is a good consideration and promise, and upon this done I may sue upon it. Adjudged Hatch and Capels Case. Godb. Rep. pl. 290. M. 11 Jac. Co. B.

If one be Indebted to me Twenty Pound by Bill, and in Consideration that I will faithfully promise to deliver the said Bill to him, he doth assume to find two sufficient Sureties to enter into Bond to me for the payment of it; this is a good Consideration and Promise, Noys Rep. 61.

To deliver a Bill for payment of Money.

If one have a Lease for Years, the Reversion whereof is in I. W. and the Tenant (being in talk of Sale of it) in Consideration that I will procure a License from I. W. to him, he doth assume to pay me as much as I shall disburse and deserve therefore; this is a good Consideration and Promise, albeit he might have sold it without the License of I. W. Huttons Rep. 39.

To get a License to make a Lease. Quantum meruit.

If I promise, that whereas I am obliged to A. if you will procure B. (who is a Stranger) to make a Release thereof to me, I will pay you Forty Pound, in this Case, albeit it be done at my Instance, no Action lieth, Huttons Rep. 39.

Consideration unvaluable.

It is said to have been Adjudged, that if one promise Forty Pound to another, if he can procure the Assent of the Mother of a Woman, though he may do it without such Consent, yet it is a good Consideration, Huttons Rep. 39.

Consideration valuable.

If one Pawn Goods to me, and I threaten to sell the Goods if he will not pay me my Money, and I. S. standing by us, saith unto me, keep the Goods until such a time by you, without Sale of them, and if he do not then pay you, I will then pay you the Money, and take the Goods; this is a good Promise and Consideration, and if I pursue

Not to sell a Pawn, but for bear.

due the Consideration, and he break his promise, I may have this Action, Bulstr. 3. part 68.
 So if one have Wares, and purpose to Sell them, another being desirous to Buy them, and I say to him, do not Sell them away, but tarry till such a day, and then I will pay you for them; this is good in the Consideration and Promise both, for by this he is hindered in the Sale thereof, Bulstr. 3. 68.

If two be bound in a Bond for the Debt of another, and it is Forfeited, and one of them say to the other, pay you all the Debt, and I will pay you the one half again; this is a good Consideration and Promise, and being purged, will maintain the Action, Bulstr. 3. part 162.

If one retain me to be his Soliciter, for the Prosecuting or Defending of some of his Law Causes, and promises to give me so much, &c. This is a good Contract, upon which I may have this Action, Croo. 1. last published 760.

If one borrow my Mare to Plow his Ground, and promise the Re-delivery of her; this is good, and not performed, Actionable; And if he work her so excessively, that she Die, this is Actionable as a Misfeasance, Goldsb. and Brownl. 17.

If A. be in Prison at my Suit, and B. in Consideration that I will set him at Liberty, give me his word that he shall pay the Money at such a day Certain; To make this a good Suit, somewhat must appear of the Cause and Warrant of the Arrest, or else it seems it will not be Actionable. If a man be unlawfully Arrested, and another in Consideration of the setting of him at Liberty, doth promise to pay the Money; this it seems is not good, Godb. Rep. pl. 452. and Noy's Rep. 47.

If

Discharge
my Debt
to another

To sollicite
Causes,

Borrow-
ing of a
Horse,

To set one
Arrested
at Liber-
ty.

Unlawful
Arrest.

If A. assume to B. that where C. was Indebted to him Forty Pound, that if he would not Implead C. that if the Money were not paid at such a day, that then A. would pay the Money; and this is held good. Owens Rep. 29.

Not to Implead.
To forbear.
part 12.

If a Writ come to me that am a Sheriff to Arrest A. at the Suit of B. and B. pray me to make one Russel his Friend a special Bayliff in it; and in Consideration thereof, assume, that if A. escape, he shall take no Advantage against me; this is good, and if Russel do Arrest him, and let him escape, and the Plaintiff sue me for it, I may sue him upon this Promise, Owens Rep. 97.

To make special Bayliffs of my naming.

The Wife of I. S. was Executrix to A. B. and had Assets to satisfy all Debts and Legacies; she Dies, and the Goods remain in her Husbands hands, and I (being a Legatee) demand my Legacy of him, and he thereupon saith to me, Forbear till Michaelmas, and I will pay you; it was Demurred if a good Consideration, and it was adjudged to be no good Consideration. And there these Cases said to be adjudged, Godfreys Case. Godfrey laid Claim to Coppy-hold Land; and the Coppy-holder in possession said to him, If the Opinion of the Lord Cook be, that Godfrey hath a good Title to it, I will surrender it to him; and for not surrender, the Action was brought, and it was adjudged, that the saying of the Suit was a sufficient Consideration to have this Action.

Forbearance.

Where I have lent to another Twenty Pound, and he doth afterwards in Consideration hereof, assume, that he at the end of the Year will lend me Twenty Pound for a Year; or pay me Five Pound; this is not a good Consideration, Owens Rep. 144. Adjudged. And it seems by one Judg

Consideration part

to have been held, that upon these words, Do such a thing, and I will give you Five pound; No Action will lie. So that where I say to one, in Consideration you will serve me for a Year, I will give you Five Pounds, that this is no Cause of Action, Owens Rep. 144. But the Law seems otherwise in both Cases.

Forbear-
ance.

How a
promise
shall be
taken.

If one be Indebted to me a Hundred Pound on an Obligation, and I. S. in Consideration that I at his request will forbear to Sue him, that if the Obliger do not pay it, he will; the Promise and Consideration is good, Adjudged, Mayes and Sidleys Case. Huttons Rep. 47. And there this difference was taken, where the Promise doth appear to be such, that it is no benefit at all to him in whole behalf it is made, and was requested; as forbearance for an hour, or a little time, there it is not good. But where it is General, and not Limited to any time, that shall be taken for a total forbearance, or at least a forbearance for a convenient time, which the Court must Judge; And if there be a Subsequent forbearance for such a reasonable time, and it be set forth in the Pleading, the Action is well brought, Huttons Rep. 46, 47. Bulstr. 3. 206.

It was one Palmers Case, as it was there said, Forbear him a little while, and if he do not pay it, I will. It was Adjudged for the Plaintiff, Banco Regis. But afterwards it was by a Writ of Error reversed. And if in these Cases he doth not forbear a convenient time after, it is no good Consideration, Huttons Rep. 46, 47. Forbearance Per paululum tempus, and Per tempus breve, are alike Uncertain; but Tempus conveniens is good, Bulstr. 1. part 92, 14 H. 8. 19, 20. Pasche & Jac. B. R. Sackford and Phillips.

If

If the Testator had owed me Money, and the Executor in Consideration that I will forbear the Debt for a reasonable time, assumed to pay it, and I did thereupon forbear three months; this was adjudged good, Huttons Rep. 27. 108. Bulstr. 1. part 41. Bulstr. 3. 106, 107.

If one promise me in Consideration that I will forbear him for a little small time, (viz) for a fortnight, or thereabouts, that he will pay me the Debt; and I forbear him two Years, I may have the Action upon this Promise, Adjudged. Bulstr. 3. part 41.

If one in Consideration that I in a short time will Deliver him two fat Oxen, he will in a short time pay me 10 l. for the Oxen; this is not good, Adjudged. Bulstr. 1. part 97. So if I sell a Horse to another for so much as he shall value him, So I sell a Horse for Ten Pound to be paid me per breve tempus; this is Incertain and Void, Bulstr. 1. part 92.

Incertain-
ty.

If one that hath the possession of Certain Goods, Deliver them to another, and in Consideration thereof, he to whom the Delivery is made, doth promise to Redeliver them unto the Bayliff, or to pay so much Money, this is a good Consideration, when he that makes the Delivery hath a lawful Property by Title, Leonard Rep. pl. 303.

Delivery
of goods.

If a Contract be to pay Money for Liches, or any other thing, and the thing Contracted for cannot pass, nor by this Contract be had; there no Action will lie for the Money, for a man hath nothing for his Money, Bulstr. 1. part 111, 112.

For a
thing sold
that can-
not be
had.

If one within Age Buy Velvet, and other Wares of me, and then Die, and after his Death I demand the Debt of his Executor, and he say,

Infant
Conside-
ration
void.

forbear it till Michaelmas, and I will pay you then, or put in sufficient security for it. And it was adjudged against the Plaintiff, Leonards Rep. pl. 156.

Forbear-
ance.

Part 13.

It is said to be the Lords Greys Case. 9 Eliz. his Father was Indebted to divers Merchants upon simple Contracts, and Died, Seized of Divers Lands which Descended to his Son and Heir in Fee, the Creditors Demanded their Debts of the Heir, who answered to them, if my Father were Indebted to you, I will pay it, and upon that promise an Action was adjudged to lie, although the Heir by Law were not Chargeable.

Conside-
ration past

If I request another to do a thing for me, and make him no Promise, and after he tells me he hath done it, and then I promise to pay him for it; this is a good Promise and Consideration, although the Promise go not with the Request. Otherwise it is where a man doth me a Courtesie without any Request, Brownl. and Goldsb. 8.

To make a
Lease for
years.

If I make a Lease to A. for Years, and after Request A. to grant it for Years to B. and promise something for this at the time, or before the grant, there it may be good, but if it be made after the grant, it is no good Consideration, Godb. Rep. pl. 19.

If one promise to me, that if I will make him a Lease of such Land for One and Twenty Years at such a Rent, for a Rent of Ten Pound a Year, he will give me a Horse; this is good, and I may have this Action upon it, Bullstr. 3. 31.

Provision
for a sick
man.

If one be fallen Sick in my House; being an Inn, and I. S. say to me, provide for him such necessaries as he shall want, and I will see you paid for it, or I will pay you for it; this is a good Consideration and Promise. And in my Suit brought upon

upon it, I shall not need to shew what necessaries in particular I did lay out for him, but in general, it is sufficient that I provided necessaries amounting to so much, Bulstr. 3. 31. Adjudged.

So if one say to me a Physician, that if I Cure such a one of a Fistulow, he will give me so much for my pains, Bulstr. 3. 31.

Physician
to heal a
sick per-
son.
Payment
of Money.

If I be bound in an Obligation to pay another Fifty Pound on a day to come, and afterwards after the same is due, in Consideration that I at his request will pay unto one Playford to his use Fifty Pound upon the Tenth day of December following, in satisfaction of the said Debt, he doth assume and promise to me to Deliver up the same Obligation to me, when he shall be thereunto requested, to be Cancelled; this is a good Consideration and Promise. But in an Action brought upon it, there must be a special request Averred, or it will not lie, Bulstr. 3. 298.

Averment
Request.

And so it is upon Promises of all things Generally, to be done upon Request, Idem.

If I have a Capias utlagat, against the Body and Goods of I. S. for Fifty Pound owing to me by him, which I am about to Execute, and W. S. (on his behalf) doth request me to stay the Execution of the Writ till such a Day, and if I. S. shall not pay me my Fifty Pound that day, in Consideration of such stay of the Execution of the said Writ, and of Two Shillings Four Pence to be given to him by me for the renewing of the Writ. W. S. doth promise me, that if I. S. pay me not the Fifty Pound at the Day, that he will pay me, Yelverton 19.

About
Suits of
Law.

Forbear-
ance.

If I have a Writ of Execution against me, and I assume to the Sheriff, that if he will Arrest him

Arrest of a
man upon
a Writ.

him, and lay him in Gaol, I will save him harmless; it seems this is not a sufficient Consideration for it, but his Office, and what he is bound to do, Herleys Rep. 175, 176.

To make special Bayliffs at my Request.

If I have a Suit against A. and a Capias to take his Body, and desire a Warrant of the Sheriff to C. and D. as special Bayliffs, and promise the Sheriff, that if they Arrest him, and after suffer him to escape, that I will save the Sheriff harmless for the escape; this is good, and if I Sue him for the escape, he may Sue me on the Promise, Leonards Rep. pl. 130.

About Merchants

This Agreement is made between me and another, That whereas I have sold to him a Thousand Couple of Newland Fishes to his use, and in Consideration that he should Ship, and should bring and carry the Adventure of them from Bristol, to the Port of St. Lucar, and shall carry back the value of them to London, or Briskow, according to the use of Merchants, he doth promise upon the Arrival of the Fish in the Port of St. Lucar, that he will give me a Hundred and Twelve Pound; this is a good Agreement, Leonards Rep. 335.

To carry or bring the adventure of goods.

Not to prosecute the probare of a Will.

If I Sue one in the Prerogative Court, to disprove a pretended Will, whereby Legacies are given to me, which Will he labours to have proved; and he in Consideration that I will no further Prosecute therein, promise me a Hundred Pound; this Consideration and Promise is good, Leonards Rep. pl. 159.

A. was bound to B. in Twenty Pound, and afterwards A. promised to B. that in Consideration the said A. should not be Damified by reason of the said Bond, to give the said B. Ten Pound, and

and upon that Promise B. brought an Action of the Case, and shewed that the Defendant was not Damned by reason of the said Bond; and it was Adjudged that the Action was not maintainable, because he did not shew that he had Released, or otherwise Discharge the Defendant of the Bond, Leonards Rep. pl. 159.

How it shall be taken.

If one Retain me to go from London to Paris to Merchandise divers Goods for him, and promise me so much as shall content me for it, and to give me all such Money as I shall lay out for the Work, and I say so much shall content me for my pains; in this Case the Action will lie for me clearly. But I must lay in my Declaration a special Notice and Request of this Contentment, Leonards Rep. 167.

About Merchants

If there be a Question between me and another man about a Rent, and he say to me, if I will shew him any Deed by which it shall appear that he ought to pay me such a Rent, that he will pay what is Due for the time past, and hereafter from time to time; this is a good Promise, Leonards Rep. pl. 240.

To prove a thing is due.

If I and another talk together of his having of all my Iron at such a Furnace of mine, paying Forty Shillings a Tun for it, and I assume to him he shall have it; And he assume to me that he will have it all, and for it pay according to the Rate aforesaid; these are good mutual Promises, on which Action may be brought, Yelverton 133. And therein no other Consideration is necessary to be alledged, or set forth to be performed, Bendl. 150.

Part 14.

Reciprocal promises, Consideration needed.

If there be a Question between me and another Son; (but not Heir nor Executor (of I. S.) about

Forbearance of a Suit causeless.

Heir, Executor.

Actions
Personal
die with
the person.

Promise
against
promise, a
good con-
sideration.

Reciprocal
Promises.

Reciprocal
Promises.

A Condi-
tional
promise;

the profits of Lands taken by I. S. and I intend-
ing, and having begun a Suit in Chancery against
the Son about it; he promiseth me, that so as I
will stay my Suit, and shall prove that his Fa-
ther took the Profits, or had the possession of the
Lands under the Title of my Father, that he will
pay for the Profits of the Land; in this Case,
and upon this Assumpsit, no Action will lie, for
lack of a good Consideration; for it appeareth not
how the Son is Chargeable, and if so, the Suit
in Chancery unjust, and so no Consideration. But
if the Suit be for Evidences, it may be good, But
this is for a Personal Wrong, which neither the
Heir nor Executor is to be Charged with, Adjudg-
ed. Croo. 1. last published 206, 207.

If an Executor owe for the Testator a Debt of
Two Hundred Pound to I. S. and I. S. is content,
and doth agree with him to take a Hundred pound,
and to take it by Twenty Pound a Year; and in
Consideration of this, the said I. S. doth assume to
pay it; in this there are Reciprocal Promises,
Yelverton 11.

If one promise to a Woman, that in Considera-
tion she will engage to Marry with him, he will
Marry with her; this is a Mutual Promise, and
an Action lies for either of them against the other
for the Breach of it, Stiles Regist. 32.

If one Promise to me (a Carpenter) Ten
Pound such a day, to Build him a House, and I
do promise him to Build him a House, upon this
Contract, either of us may Sue the other at any
time before the Work done, Dyer 21. Plow. 5.
3 H, 6. 36.

If one Promise for Ten Pound paid him by me
in hand, to Build me a House; this is a Condi-
tional

onal Promise, and the Money must be paid to me ere the promise will have Virtue to produce an Action. And it is not like, as where one promisseth to Build an House, and the other doth promise Ten Pound; they are Reciprocal, and have equal Remedy. And

If one be Indebted to me Twenty Pound by Bill, and I promise to deliver him the Bill, and he promise me to bring two sufficient Sureties to give Bond for the Money by a day; in this Case he may Sue me, and I him. And here needs no Averment of the one side to enable the Suit. And so in all such Reciprocal Promises. But if the promise be Conditional, Contra. Adjudged. Mich. 38. 39 Eliz. B. R. Gower and Capper.

Reciprocal Promises
Averment.

A. Sells a Cow to B. for five Pound, and assumes to deliver her to him at a certain day; And at the same time B. assumes to A. to pay him the five Pound for the said Cow at the said day, A. brings an Assumpsit for the five Pound not paid, and doth not Aver the Delivery of the Cow, and it is good enough. But the Writ must mention both the Assumpsits; for the one of them is the Consideration of the other, and either of them may have Action against the other; the one for the Money, the other for the Cow, Hobb. Rep. 88. Jenkins Centry. 7. Case 47.

Reciprocal Promises.
Averment.
Pleading.

So in an Assumpsit by a Servant for his Wages, and of the Master for his Service, where the Assumpsits are mutual. But in all Cases these Assumpsits must be made at one and the same time; for if they be made one after another, it will be but Nudum pactum. Jenkins Centry 7. Case 47.

If one Sell to me all his Blades of Coyn on
such

Executory Contract. such a Ground, the same being Sowed with Wheat and Rye, and now almost Ripe, the Tithes excepted, for Sixteen Pound to be paid at such a day to come, this is a good Bargain, and if I take the Corn (as I may) he may either have an Action of Debt, or this special Action of the Case at his choice against me for the Money, Croo. 4. Slades Case, 92.

Promise to assure Land.
Part 15.

If A. B. in Consideration of Money paid by me to him, assume to assure Coppyhold Land to me in such manner, as one Drables should advise, and he advise that A. B. shall at the next Court surrender it to the use of me and my Heirs; and shall enter into an Obligation of Forty Pound for the enjoying of it; this is a good Consideration and Promise; But in the Suit it may not be alledged a Breach of the Promise, by not Entry into the Obligation; for this is not of the Assumpsit, and A. B. is not bound to it; and therefore no Damages is to be given for that, Croo. 2. 115.

Consideration good, or not.
How it shall be taken.
Certainty.
How to be taken.

If one be Indebted to me Fifteen Pound, and he promise me to pay it by Five and Twenty shillings a Quarter, and to enter into a Bond upon Request for the payment thereof; this Promise shews it to be good, albeit no Sum certain be named for the Bond, and that it shall be in double the Sum to be forfeited; I must be sure to make my request before any day of payment come, Croo. 2. 116.

To pay Money.
Promise to assure Land.

If A. B. and I speaking together of an Obligation, wherein he and his Father are bound to Newbold, and in Consideration that I at his request will pay to Newbold Threescore pound in Discharge thereof before such a day, he doth promise to assure me such a Coppyhold for One and Twenty Years, by such an assurance as Edward Drable shall

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shall advise; this is a good Consideration and Pro^o Certainty^o
mise. And if that which is Executory in it be du^o
ly pursued, may warrant this Action, Croo. 2.
194. 195.

If one in an Assumpsit declare, that the Defen^o For a Rent
dant being Indebted to him, assumed to pay, &c.
and doth not shew how the Debt grew Due, viz.
for Rent on a Lease, or by Specialty, or by Res^o
cord, or by Recognisance, or the like; this is not
good, for if it arise by any of these means, a Ge^o
neral Assumpsit lies not; But if it be that he be^o Pleading;
ing Indebted for Wares Sold upon a Loan, or
upon any such like precedent Contract, assumed to
pay, &c. this is good, Croo. 2. 206, 207. 213,
214. If he Declare, that where he was In^o
debted to the Plaintiff Forty Pound, viz. Pro di^o Pleading;
versis denariorum summis ei prestitis, ac pro diversis,
de eodem Richardo receptis & habitis & pro quadam
pecuniarum summa, by the Plaintiff at the Defendants
request to one John Amias paid for Diet, assumed
to the Plaintiff, that he would pay the said Forty
Pound to him ante inceptionem proximi Itineris of
the Plaintiff to London; this it seems is good, al^o
beit so generally alledged; But if he Sue upon
it, he must be sure to set forth the time of his next
Journey to London, &c. Croo. 2. 246. Croo. 2.

69. A. Declared that he and B. accounted for di^o Upon an
vers Sums of Money received by B. that he was Account.
found to be in Arreages Ten Pound, and in Con^o
sideration thereof, assumed to pay it such a day;
this was Adjudged good without any forbearing of
Suit, or other matter in the Promise.

If one did assume to my Wife in her Widow^o Promise
hood, that if she would Marry Thomas Mason, he of Money
would pay her Pearly after his Death, during her on a Mar-
riage to a
Wife.
life,

life, Forty Shillings, if he did marry him; a good Action lies for this Forty Shillings a Year, Croo. 2. 222.

Assumpsit
to a Feme
Covert.

If I. S. promise my Wife during Coverture, in Consideration that she will Cure such a Wound, that he will pay her Ten pound, this is good and Actionable, and I and my Wife may Sue together for it, Croo. 2. 205.

Between
Merchants

I have Bought of a Merchant a parcel of good Gum, Eight and Twenty Hundred Weight, at Three pound Eight Shillings the Hundred Weight, and paid him in White Holland, at the Rate of One Shilling Four Pence the Ell: And we speak of another parcel of Gum he hath upon the Sea to come to London in May following, which he affirmed to be as good as that I had Bought, and I thereupon promise him, that if the parcel coming exceed not to Two Thousand Weight, I will within Four Months after the Delivery thereof to I. S. my Brother, Deliver to the Merchant so much Holland, according to the Rate of One Shilling Four Pence the Ell, as the same Gum shall amount unto, after the Rate of Three Pound Eight Shillings the Hundred Weight; and the Merchant in Consideration thereof, assume to Deliver to I. S. my Brother the said parcel of Gum, when it shall come to the Port of London, so as it exceed not Two Thousand Weight, and be as good as the first; this is a good Contract, that being duly pursued, and rightly set forth in Pleading, may give this Action on either side, Croo. 2. 235.

Reciprocal
Actions.

Forbear-
ance of a
Debt.
Executor.

If I Lend A. Money, and he Die, and his Executor in Consideration I will not Sue him for the Money, promise, if I will but give him Day till

Micha-

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Michaelmas, then to pay it to me; this is a good Consideration and Promise, on which I may have an Action, Croo. 2. 235.

If I at the Request of A. B. become bound in a Recognisance with him for his appearance before the Justices of the Gaol delivery of S. and he in Consideration thereof, assume to save me harmless from that Recognisance, &c. this is a good Consideration and Promise, and if he appear not, and I be Damned, I may have this Action, Croo. 2. 281, 282.

Engage-
ment for
another.

If one in Consideration that I will be bound for his Dun in such Sums, and to such Persons as he shall desire me, he doth assume to save me harmless for every such Sums of Money, and all such Debts as I shall become bound to any Person for him; this is good to bind him, and if he do not so, I may have this Action, Croo. 2. 287.

Engage-
ment for a
third per-
son.

If one in Consideration of Ten pound promise to make me a Lease for One and Twenty Years of a House, and that he having a House adjoining, wherein is a Shop, assume that he will not suffer the Trade of a Joiner to be used in the same Shop during this Lease; this is good, and if he break it, I may have this Action, Croo. 2. 326.

To pay
Money
Promise
not to use
a Trade.

If I deliver Goods to a Common-Bargeman, that is used to Carry from, and to such places, and give him Two Shillings for the Carriage, and he negligently Lose them, I may have this Action, albeit he make no special Promise to me about it, upon an Assumpfit in Law, Croo. 2. 330.

Common
Carrier
lose my
Goods.
Assumpfit
in Law.

If the Father of A. B. be Indebted to me in Two Hundred pound, and deliver me Two Statutes from other men of Four Hundred pound, and promise to make me an Assignment and Let-
ter

Delivery
of Statutes;
good Con-
sideration.

ter of Attorney, to recover and receive the Debts upon the Statutes, but both Die before it is done; and A. B. pretending himself Executor to his Father, request me to Deliver to him the Statutes, and in Consideration that I will do it, promise to pay me Two Hundred pound at a day; this is a good Consideration, and if pursued, will make the Action good, Croo. 2. 342.

A Physitian to Cure one that is Sick.

If I be a Professor of Physick, or Chyrurgery, and one that is Sick, or hath an Infirmitie, in Consideration that I will at his Request do my best to Cure him, promise to pay upon Request so much as I shall Deserve; this is a good Consideration, and if I pursue it, it will give me this Action, for my Recompence, Croo. 2. 370.

Forbearance of a Suit.

If I Sue a man for Debt, and another man in Consideration that I will Agree, and be Contented to Desist from further Prosecution of the Suit I have so begun, and will Remit the Defendant his Costs, assume to pay him his Money at Michaelmas next, or then to give him Security to pay it at the end of Six Months; this is a good Consideration, and if Pursued and Executed, will make him liable to this Action, Croo. 2. 397.

Executor chargeable.

If one promise to give me Two Hundred pound at his request to Marry his Kinswoman and he die, I may have this Action against him, and recover the Money of his Executor, if he have Assets, Croo. 2. 405.

A Marriage. Executor chargeable.

If the Testator do promise to another, that in Consideration he will Marry his Daughter, he will pay him a Hundred pound, and leave him as he left, or gave any of his other Childzen; this is good for both parts of the Promise, and the Action will lie against the Executor, as well for this
Col

Collateral Promise, as for Debt, Croo. 2. 418.

If one for such a Sum of Money paid to him promise to take my Son to be his Apprentice for Seven Years in such a Trade, to Instruct him in the said Trade, to have Meat, Drink, and Apparel during the said Term, this is good, Croo. 2. 406.

To take an Appren-
tice for Mo-
ney.

If one Buy Twelve Weights of Barley, and assume to pay for them as much as the Seller should have of any other, abating a Penny only in every Bushel, the Agreement is good, but if the Seller Sue for his Money, he must be sure in this Action to set forth that he hath given notice before the Action brought for what he had Sold it, Croo. 2.

Certainty.

Notice.

432.

If one promise to me who am engaged in a Suit for a Title of Common for a Jugg of Beer I gave him, and upon my promise to Maintain and Defend my Suit; that he will pay me half my Charges, &c. this may be a good Consideration and Promise, Huttons Rep. 89.

Considera-
tion of a
Jugg of
Beer.

If one Sue me in an Action in any Court, and promise me in Consideration that I will give Order to my Attorney to Confess this Action, and suffer him to have a Judgment in the Suit, that no Judgment shall be entered till such a time; this is a good Consideration and Promise, Huttons Rep. 63.

To confess
an Action
in a Suit.
Promise to
stay a Suit.

If I be bound by Obligation to I. S. to pay Money at a Day, and he promise me, if I pay the Money at the Day, he will deliver me up my Bill; this a good Promise and Consideration, on which I may have an Action, if I pay the Money. But if one have forfeited a Bill, and three days after promise to the Obliger, that if he will pay him his Money three days after that he will deliver the Bill to him, it seems this is not a good Consideration.

Considera-
tion to
pay my
Debt.
Confide-
ration un-
valuable.

Forbear
Suit.

tion. If I Buy and pay for Cattel, of one in a Market, and he keeps my Cattel, and will not Deliver them; and I in Consideration that he will Deliver them, promise to pay him a certain Sum of Money, he may have an Action for this. If a man be to pay me Money the first of May, and that day in the morning I come to him, and pray him to pay it in the morning, and I will give him five pound of it, or abate it, for he is not bound to pay it till towards night. If one have a Judgment, and in Consideration that he will not Sue Execution, the other doth promise to pay it; this is good, Huttons Rep. 76, 77.

This Case was said to be Adjudged. In Consideration that the Plaintiff had promised to the Defendant Ten pound a day, according to the condition of an Obligation, the Defendant promised to deliver the Obligation; that this was a good Consideration, Huttons Rep. 117.

If one keep my Horse for the Year, and another comes to him, and in Consideration that he will at his request deliver the Horse to him, to the use of the Owner, promise to pay the Money; this is a good Consideration and Promise. So it is said, if I lose my Goods, and another find them, and I promise if he will deliver them to me, I will pay him Money; this is said not to be good, Huttons Rep. 101.

Consideration past,
or Ex post facto.
Part 17.

If one hath served me a time, and afterwards in Consideration of the Service he hath done me, I promise him Twenty Shillings upon request; this is a good Consideration and promise, Adjudged. So in Consideration that one hath married my Daughter. So in Consideration that you have been Surety for me in such a Debt, I promise to save

Save you harmless. So it is said, in Consideration that you have been Bail for me, I promise to give you a Horse. And in Consideration that you (being a Carpenter) have well Built my House, I promise to give you Five pounds, Sed quere of Delivery these two last Cases, *Huttons Rep.* 84. 85. But of Cloths. it seems these things in the Declaration must be laid to be done at the request of the Defendant.

If a Taylor make a Sute of Apparel for I. S. and I. D. request the Taylor to Deliver it to him, and he will pay for the making thereof; this is a good Consideration. *Huttons Rep.* 111. Promise to pay for the making of it.

If one be a Suitor to a Paid Dwelling in my House, which he doth afterwards Parry, and he doth then desire that his Wife may continue with me for a Year longer: And after (about the middle of the Year) he doth promise, that in Consideration I will suffer his Wife to continue there as a Sojourner for a whole Year, that he will pay me for the whole Year, as well for that which was past, as for that which was to come; it was adjudged a good Consideration and Promise, *Bulstr.*

3. 187.

If upon Request one becomes Bail for I. S. in an Action against him, if afterwards hanging this Action, he promiseth to Discharge him of it; this is good to raise the 2. mile, *Bulstr.* 3. 187. Being Bail for one, he promiseth to discharge him.

If one have a Lease for Years of my Wives Land, and another man in Consideration that I will procure him to Assign this Lease to him, doth promise to pay me the Rent for all the rest of the Term; this is a good Consideration and Promise. And the Husband alone may Sue for it upon this Promise, *Leonards Rep.* pl. 55. To assign the Lease, he promiseth to pay the Rent.

If one have a Lease for Years of my Land, and being

For that
the Lessee
doth pay
his Rent,
he promi-
seth he
shall enjoy
the Land.
Contract
for ano-
ther.
To buy a
Gelding
for him, he
promiseth
to pay
him.

and being ended, I do in Consideration thereof, that the Lessee hath occupied the Land, and paid his Rent, promise to save him harmless against all persons for the Occupation thereof, for the time past, and to come; this is a good Consideration and Promise, *Leonards Rep. pl. 154.*

If I do request one to Buy such a Gelding for me, and do promise that I will repay him again, and he Buys this Gelding for me accordingly, clearly he may have an Action of the Case against me for this Money, upon my promise, and I may take the Gelding, and before my taking of the Gelding, the property of the Gelding is not in him who Bought him to my use, but in me, *Bulstr. 1. part 169.*

That he
will for-
bear the
probate of
a Will, he
promiseth
Money.

If one in Consideration that another that is made an Executor of a Will, will forbear the probate of it, and release the total Execution of it, that he, when the other shall come to such a place, will pay him so much; this is good enough, *Bulstr. 1. part 185.*

That he
shall stay a
Suit, and
the other
pay so
much.

If I Sue in Chancery I. S. for Marriage-money received by him, and he upon this, in Consideration that I will stay my Suit there, will pay me a Hundred pound, and Deliver up a Bond of Forty pound which he hath; this is good, and here the Judges held the Promises to be mutual, and that the Plaintiff by this did assume to stay his Suit, *Bulstr. 2. 42.*

Money for
a Lease for
years.

If I have a House for Years, and I agree with I. S. to let it him; paying to me Forty Shillings a Year, and Ten Shillings for the last Quarter, and each of us do give to the other Twelve Pence to perfect the Bargain, and after (the same day) the Defendant in Consideration of the Premises, did promise

promise to give to the Plaintiff Thirty Pound, and did assume to pay this afterwards. In Consideration of all this, and performance of the Contract, he made the Lease to the Defendant accordingly; this is a good Consideration and Promise, and he may Sue for the Thirty Pound, Bulstr. 2. 37.

A. had a Plaint against B. in the Counter in London, B. was Arrested and Imprisoned, and one C. a stranger to the Suit prays me to be Bail for B. and assumes to me to save me harmless from the Bail, after I am in Execution for the Debt, but by mistake, and upon an Erronious proceeding in the Suit; in this Case, if I Sue, as perhaps I may, I shall have very little Damage, because I was not Chargeable by Law, Croo. 1. last publisht 459.

To save harmless.
Part 18.

If one bring me a Writ of Execution (I being Sheriff) against any one of my County, and desires me to make I. S. my Special Bayliff, and promise, that if the Party escape, he will take no advantage against me for it; this is a good Promise and Consideration, and if he do suffer him to escape, and the Plaintiff Sue me upon the escape, I may have this Action for it, Croo. 1. last publisht 178. 271.

M. R. hath entred into a Bond of Two Hundred Pound to me, and given all her Goods to I. S. to pay her Debts. I. S. pretends that this Bond was read to M. R. at the Sealing but a Hundred pound, and so void, she being Illiterate, and he assumed to me, that if I and two Witnesses would depose before the Mayor of Lincoln, that it was read to her as an Obligation of Two Hundred pounds, that he would pay it, and we did Depose it on the Book before the Mayor of Lincoln; this is a good Consi-

Consideration to make proof.

Promise to pay Money.

deration, and well Executed, and I may sue up
on it, Croo. 1. last publisht 469, 470.

Conside-
ration.
Delivery
of Goods.

If I be Indebted to I. S. Twenty Combes of
Barley, to be Delivered to him such a Day, and
A. B. in Consideration that I will Deliver it to
him before the Day, assume to me to Deliver it at
the Day to I. S. this is a good Consideration to
bind A. B. to Deliver truly, if it be Delivered
to him, Croo. 1. last publisht 883.

Promise to
deliver
over.

Considera-
tion to de-
liver
Goods.

If I bargain with A. B. to Sell and to Deliver
him a Hundred and Fifty Stone of Wool, for a
Hundred and Fourteen Pound to be paid at a Day
to come, and C. D. in Consideration that I will
Deliver the Wool to the said A. B. became Fide-
jussor for the said A. B. Assumendo & ad tunc &
ibidem promittendo to me, to pay the same Mo-
ney; this is a good Assumpsit, on which an Action
may be grounded; but I must set forth that the
Principal hath not paid it, being Demanded, and
afterwards a Demand of the Surety, Croo. 2. 500.

Promise to
be Surety
for it.

Considera-
tion to ac-
quit a
Debtor of
a Debt.

If one acknowledging himself Indebted to me
Ten Pound for divers Trespases done to me,
which I am at the request of A. B. contented to
accept of, and A. B. in Consideration that I at his
request will acquit and discharge the Debtor of the
said Debt, and permit him to carry out of my
House certain Goods of his now here, promise to
pay the Ten Pound at a Day, this is good. But
in the Suit I must shew how I Acquitted it, by
Oath, &c. Croo. 2. 503.

To abide
an Award,

If two agree upon the Sale of Land, and to
stand to the order of a third man for the Sum to
be paid, and for the assurance to be made, and they
promise the one to the other to stand to the Order
the third shall make; if he do set down an order in
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it, they are bound to perform it, or this Action will lie upon it, Croo. 1. last publisht 660

If the first Husband of a Woman put his Son to Table with me for three Years, and agree with me to give for every Year Eight Pound, and Die within the Year. After the Woman, in Consideration of her Natural affection to her Son, and in Consideration that the Son may continue with me during the residue of the three Years, promisseth to pay me Six Pound Thirteen Shillings and Four Pence, for the Tabling of her Son for the time past, and Eight Pound for every Year after he shall continue with me; this is a good Consideration and Promise, and I may recover the whole Debt formerly and after due by this Action, Croo. 1. last publisht 755, 756.

Consideration of Tabling to pay Money.

If one in Consideration that I will permit him to enjoy such Land for a Year, assume to give me Ten Pound for that Year; it seems no Action will lie for me in this, albeit I do suffer him to enjoy it, Croo. 1. last publisht 859.

Consideration of enjoying Land to pay Money.

If I Sell to another Cloth for Three Hundred Seventy Pound, the one half to be paid within Fourteen Days, and the other half at the end of Three Months, the first half whereof he hath paid me; this is a good Contract, and I may have an Action for the residue of the Money.

If A. give a Legacy of Money to B. and Die, and make his Wife his Executrix, I marry this Woman, and I promise B. that in Consideration he will forbear to Sue me for this Legacy, promise to pay it. But my Wife is Dead before the promise; this Consideration is void, and the Promise will not bind me, albeit I have in my hands some of the Goods, for I have no right to them, Croo. 2. 257.

To forbear to Sue me for a Legacy, promise to pay it.

tion. If I Buy and pay for Cattel, of one in a Market, and he keeps my Cattel, and will not Deliver them; and I in Consideration that he will Deliver them, promise to pay him a certain Sum of Money, he may have an Action for this. If a man be to pay me Money the first of May, and that day in the morning I come to him, and pray him to pay it in the morning, and I will give him Five pound of it, or abate it, for he is not bound to pay it till towards night. If one have a Judgment, and in Consideration that he will not Sue Execution, the other doth promise to pay it; this is good, *Huttons Rep. 76, 77.*

Forbear
Suit.

This Case was said to be Adjudged. In Consideration that the Plaintiff had promised to the Defendant Ten pound a day, according to the condition of an Obligation, the Defendant promised to deliver the Obligation; that this was a good Consideration, *Huttons Rep. 111.*

If one keep my Horse for the Week, and another comes to him, and in Consideration that he will at his request deliver the Horse to him, to the use of the Owner, promise to pay the Money; this is a good Consideration and Promise. So it is said, if I lose my Goods, and another find them, and I promise if he will deliver them to me, I will pay him Money; this is said not to be good, *Huttons Rep. 101.*

Consideration
past,
or Ex post
facto.
Part 17.

If one hath served me a time, and afterwards in Consideration of the Service he hath done me, I promise him Twenty Shillings upon request; this is a good Consideration and promise, Adjudged. So in Consideration that one hath married my Daughter. So in Consideration that you have been Surety for me in such a Debt, I promise to save

Save you harmless. So it is said, in Consideration that you have been Bail for me, I promise to give you a Horse. And in Consideration that you (being a Carpenter) have well Built my House, I promise to give you Five pounds, Sed quere of Delivery these two last Cases, *Huttons Rep.* 84. 85. ^{But of Cloths.} it seems these things in the Declaration must be laid to be done at the request of the Defendant.

If a Taylor make a Sute of Apparel for I. S. ^{Promise to} and I. D. request the Taylor to Deliver it to him, ^{pay for the} and he will pay for the making thereof; this is a ^{making} good Consideration. *Huttons Rep.* 111. ^{of it.}

If one be a Suitor to a ~~Widow~~ Dwelling in my ^{Fortabling} House, which he doth afterwards Marry, and he ^{promise to} doth then desire that his Wife may continue with ^{pay for it.} me for a Year longer: And after (about the middle of the Year) he doth promise, that in Consideration I will suffer his Wife to continue there as a Sojourner for a whole Year, that he will pay me for the whole Year, as well for that which was past, as for that which was to come; it was ~~Ad-~~ judged a good Consideration and Promise, *Bulstr.*

3. 187.

If upon Request one becomes Bail for I. S. in ^{Being Bail} an Action against him, if afterwards hanging this ^{for one, he} Action, he promiseth to Discharge him of it; this ^{promiseth} is good to raise the Promise, *Bulstr.* 3. 187. ^{to discharge him.}

If one have a Lease for Years of my ~~Wives~~ Land, and another man in Consideration that I ^{To assign} will procure him to Assign this Lease to him, doth ^{the Lease,} promise to pay me the Rent for all the rest of the ^{he promi-} Term; this is a good Consideration and Promise. ^{sest to} And the Husband alone may Sue for it upon this ^{pay the} Promise, *Leonards Rep.* pl. 55. ^{Rent:}

If one have a Lease for Years of my Land, and ^A being

For that
the Lessee
doth pay
his Rent,
he promi-
seth he
shall enjoy
the Land.
Contract
for ano-
ther.
To buy a
Gelding
for him, he
promiseth
to pay
him.

and being ended, I do in Consideration thereof, that the Lessee hath occupied the Land, and paid his Rent, promise to save him harmless against all persons for the Occupation thereof, for the time past, and to come; this is a good Consideration and Promise, *Leonards Rep. pl. 154.*

If I do request one to Buy such a Gelding for me, and do promise that I will repay him again, and he Buys this Gelding for me accordingly, clearly he may have an Action of the Case against me for this Money, upon my promise, and I may take the Gelding, and before my taking of the Gelding, the property of the Gelding is not in him who Bought him to my use, but in me, *Bulstr. 1. part 169.*

That he
will for-
bear the
probate of
a Will, he
promiseth
Money.

If one in Consideration that another that is made an Executor of a Will, will forbear the probate of it, and release the total Execution of it, that he, when the other shall come to such a place, will pay him so much; this is good enough, *Bulstr. 1. part 185.*

That he
shall stay a
Suit, and
the other
pay so
much.

If I Sue in Chancery I. S. for Passage-money received by him, and he upon this, in Consideration on that I will stay my Suit there, will pay me a Hundred pound, and Deliver up a Bond of Forty pound which he hath; this is good, and here the Judges held the Promises to be mutual, and that the Plaintiff by this did assume to stay his Suit, *Bulstr. 2. 42.*

Money for
a Lease for
years.

If I have a House for Years, and I agree with I. S. to let it him; paying to me Forty Shillings a Year, and Ten Shillings for the last Quarter, and each of us do give to the other Twelve Pence to perfect the Bargain, and after (the same day) the Defendant in Consideration of the Premises, did promise

promise to give to the Plaintiff Thirty Pound, and did assume to pay this afterwards. In Consideration of all this, and performance of the Contract, he made the Lease to the Defendant accordingly; this is a good Consideration and Promise, and he may Sue for the Thirty Pound, Bulstr. 2. 37.

A. had a Plaint against B. in the Counter in London, B. was Arrested and Imprisoned, and one C. a stranger to the Suit prays me to be Bail for B. and assumes to me to save me harmless from the Bail, after I am in Execution for the Debt, but by mistake, and upon an Erroneous proceeding in the Suit; in this Case, if I Sue, as perhaps I may, I shall have very little Damage, because I was not Chargeable by Law, Croo. 1. last publisht 459.

To save harmless.
Part 18.

If one bring me a Writ of Execution (I being Sheriff) against any one of my County, and desires me to make I. S. my Special Bayliff, and promise, that if the Party escape, he will take no advantage against me for it; this is a good Promise and Consideration, and if he do suffer him to escape, and the Plaintiff Sue me upon the escape, I may have this Action for it, Croo. 1. last publisht 178. 271.

M. R. hath entred into a Bond of Two Hundred Pound to me, and given all her Goods to I. S. to pay her Debts. I. S. pretends that this Bond was read to M. R. at the Sealing but a Hundred pound, and so void, she being Illiterate, and he assumed to me, that if I and two Witnesses would depose before the Mayor of Lincoln, that it was read to her as an Obligation of Two Hundred pounds, that he would pay it, and we did Depose it on the Book before the Mayor of Lincoln; this is a good Con-

Consideration to make proof.

Promise to pay Money.

deration, and well Executed, and I may Sue up' on it, Croo. 1. last publisht 469, 470.

Consideration.
Delivery
of Goods.

If I be Indebted to I. S. Twenty Combres of Barley, to be Delivered to him such a Day, and A. B. in Consideration that I will Deliver it to him before the Day, assume to me to Deliver it at the Day to I. S. this is a good Consideration to bind A. B. to Deliver from r. if it be Delivered to him, Croo. 1. last publisht 883.

Promise to
deliver
over.

Consideration to deliver
Goods.

If I bargain with A. B. to Sell and to Deliver him a Hundred and Fifty Stone of Wool, for a Hundred and Fourteen Pound to be paid at a Day to come, and C. D. in Consideration that I will Deliver the Wool to the said A. B. became Fidejussor for the said A. B. Assumendo & ad tunc & ibidem promittendo to me, to pay the same Money; this is a good Assumpsit, on which an Action may be grounded; but I must set forth that the Principal hath not paid it, being Demanded, and afterwards a Demand of the Surety, Croo. 2. 500.

Promise to
be Surety
for it.

Consideration to acquit a
Debtor of
a Debt.

If one acknowledging himself Indebted to me Ten Pound for divers Trespasses done to me, which I am at the request of A. B. contented to accept of, and A. B. in Consideration that I at his request will acquit and discharge the Debtor of the said Debt, and permit him to carry out of my House certain Goods of his now here, promise to pay the Ten Pound at a Day, this is good. But in the Suit I must shew how I Acquitted it, by Dred, &c. Croo. 2. 503.

To abide
an Award.

If two agree upon the Sale of Land, and to stand to the order of a third man for the Sum to be paid, and for the assurance to be made, and they promise the one to the other to stand to the Order the third shall make; if he do set down an order in it

it, they are bound to perform it, or this Action will lie upon it, Croo. 1. last publisht 660

If the first Husband of a Woman put his Son to Table with me for three Years, and agree with me to give for every Year Eight Pound, and Die within the Year. After the Woman, in Consideration of her Natural affection to her Son, and in Consideration that the Son may continue with me during the residue of the three Years, promisseth to pay me Six Pound Thirteen Shillings and Four Pence, for the Tabling of her Son for the time past, and Eight Pound for every Year after he shall continue with me; this is a good Consideration and Promise, and I may recover the whole Debt formerly and after due by this Action, Croo. 1. last publisht 755, 756.

Consideration of Tabling to pay Money.

If one in Consideration that I will permit him to enjoy such Land for a Year, assume to give me Ten Pound for that Year; it seems no Action will lie for me in this, albeit I do suffer him to enjoy it, Croo. 1. last publisht 859.

Consideration of enjoying Land to pay Money.

If I Sell to another Cloth for Three Hundred Seventy Pound, the one half to be paid within Fourteen Days, and the other half at the end of Three Months, the first half whereof he hath paid me; this is a good Contract, and I may have an Action for the residue of the Money.

If A. give a Legacy of Money to B. and Die, and make his Wife his Executrix, I marry this Woman, and I promise B. that in Consideration he will forbear to Sue me for this Legacy, promise to pay it. But my Wife is Dead before the promise; this Consideration is void, and the Promise will not bind me, albeit I have in my hands some of the Goods, for I have no right to them, Croo. 2. 257.

To forbear to Sue me for a Legacy, promise to pay it.

consideration
past.

If I have Delivered to one Cloths for so much on a Bargain; and after he in Consideration of this Debt, promise to pay it me a Year hence; it is said to be Adjudged good, Bullsr. 1. 85

' Part 19.
Deliverance of
cloth.
Tabling
with one.

If one hath sojourned with me half a Year, and then I am desired by her, or a Friend of hers, to let her sojourn with me another half Year, and promise to pay me then for the whole Year past, and to come; this is a good Consideration to raise the Action, to Recover for the whole Year, Bullsr. 3. 187.

Keeping a
Pawn.

If Goods be Pawned to me, and I tell a Friend of the Owners, that I will Sell them, if he do not bring my Money, and he pray me to keep them till such a day, and if he do not pay me then, that he will pay me; this is a good Contract to raise an Action, Bullsr. 3. 70.

Building a
House.
Nudum pactum.

If I promise to another in Consideration of something past, as because he hath Buildd me a House, or in Recompence of such a Trespass, done by him, or for that he hath quitted me of such a Trespass, that I will pay him such a Sum of Money; this is Nudum pactum. So if I say to another, to whom I. S. doth owe Money, if he doth not pay you, I will pay you, Plow. 5. 102. Doct. and Stud. 105. 12 H. 8. 12. Dyer 21. 27. Co. 6. 43. Yet see Brownl. 8. 9.

Done me a
Trespass.

So if one promise me, that if I will Deliver him one Hundred Crowns, he will Deliver them to me again; this is no good Consideration. And yet if one this day deliver me Twenty Crowns, and in Consideration hereof I do then promise to Redeliver them; this is a good Promise, Adjudged.

Nudum pactum.

So if I assume to another to Lend him Thirty Pound for a Year, or to give him Forty Shillings in

in Consideration that he at such a day (now past) at my request lent to me Thirty Pound for such a time; this is not a Valuable Consideration, and therefore the Promise is not Actionable, Croo. 1. last published 885.

If one Sell a Horse to another for Money, and a third Person standing by, saith, if he do not pay you, I will. But this is after the Sale made; this Promise will not bind. So of Wares Sold before. And so upon a Loan of Money. But the Promise that must bind in such a Case as this, must be laid to be, before the Bargain be past; and in Consideration that he at his request did it, and that he promised, that if the other did not pay him at the time, he would pay him, Bulstr. 1. part 120. See Bulstr. 2. 75, 73, 76, &c.

Count.

If one promise me, if I can procure a Decree in Chancery in such a business, that he will give me Three Pound for it; this is good, and if I do it, I may Sue for the Money, Yelverton 121.

For to get a decree in Chancery to pay Money: Count.

One did declare, that in Consideration that he had Sold a Horse to him, that he would pay him Five Pound; in this Case it is said to be Adjudged in the Exchequer Chamber good, albeit it did imply the time past, Pasche 8 Jac. Co. B. Mary Andrews Case.

So one Declared, that he at the Defendants request had Sealed a Release, and therefore he assumed, two Judges agreed it good. And all of the Judges held, if it had been made at the time of the Release made, it had been good, Croo. 2. 295.

So one Declared Quod deliberasset & dedisset to the Defendant Twenty Sheep, and in Consideration hereof, an Assumpsit; this was resolved not good, and the Judgment was stayed upon it, Croo. 1. last published 442.

If a Baplist pay the Debt, and hereupon the Plaintiff doth promise to him to deliver the principal Obligation, and a Letter of Artozney to Sue the Principal; this is no good Consideration to raise an Action. Adjudged in the Exchequer Chamber. 38. 39 Eliz. Dixon and Adams.

Delivery
of goods.

If I at another mans request deliver him others pieces of Cloth, and he assume to Re-deliver them to me on request; no Action will lie upon this. But if it were Honey out of a Bag, it would. Yelverton. 128.

For a Loan
of Money
to pay it
again.

If one in Consideration that I have Lent him Ten Pound, promise to pay it me again; this is a good Consideration and Promise, Brownl. 2. part 40.

For that
one doth
owe me
Money on
a Bond
that he
pay me.

If one in Consideration that he doth owe me fife Pound Rent on a Lease of a Ground for a year, or upon a Bond promise to pay it me upon request; it seems this is not a good Consideration, for it is real and certain, and I may have Debt for it. But if one shall promise me in Consideration that he owes me fife Pound on a Contract, promise to pay it such a day; this is good. So in the first Cases, if there be a forbearance of the Debt any time in the Consideration, then the Action will lie, Hobb. pl. 365. Croo. 1. part 250.

Confide-
ration to
take 150 l.
for 250 l.
Executor.

If I. S. be Indebted to me Two Hundred and Fifty Pound on a Simple Contract, and I make I. Goring my Executor, and die, and he doth agree; and is content to take of I. S. for the Two Hundred and Fifty Pound, one Hundred and Fifty Pound, and to take it by Twenty Pound a year, in Consideration whereof I. S. doth assume so to pay it, and it is a good Consideration and Promise, Yelverton 10. So if an Executor be In-

Indebted for his Testator, and after his Death he make a promise to pay it at a day to come, this makes him chargeable in his own Right.

If one give me Seven Pound Legacy, and make his Wife Executrix, and Die, and the Parry with A. who in Consideration he hath the Custody of some of the Goods, promise to pay it at a Day, and his Wife is Dead at the time of the Promise; this is no good Consideration and Promise, Yelverton 184.

A. brought an Assumpsit against B. and Declared, that whereas B. had Feloniously slain one P. M. the Defendant after this required the Plaintiff to endeavour to get his Pardon, which he did thereupon labour and obtain. And that afterwards the Defendant in Consideration thereof promised him him a Hundred Pound. And for this he brought his Action. And the Declaration was held good, Hobb. Rep. 147.

Confide-
ration
past.
Part 10.

If one Board with me a Quarter of a Year, and after I. S. entreat me that she may Board with me a Year longer, and after before the Year expired I. S. doth promise me that he will pay me for the Year, and for the Quarter behind as much as it shall be worth; in this Cause, because part of the Consideration is Executory, and all is not Executed; this will be good, and I shall recover of him for the Year, and for the Quarter both. Adjudged. Trin. 14 Jac. B. R. Corton and Westcot.

If one promise me, in Consideration that I was bound for him for a Debt, and paid the Money, that he will pay me my Money again such a Day; this is a good Consideration, Croo. part 2. 18. The Plaintiff laid his Action, that the Defendant requested him to give his Credit to I. S. for Fifty Pound

Pound for Wine, and that upon this he gave his Bond for it, and had paid it upon a Suit; and having acquainted the Defendant with it, he promised in Consideration thereof to pay it; this was Adjudged a good Consideration, Croo. 2. part 18. Yelverton 45. See Croo. 1. last publisht.

One in Consideration that I have paid for him at his request Ten Pound to C. at such a day, which was a Year before the Promise, he doth assume to Re-pay it, Cum inde requisitus esset; this is a good Consideration, Croo. 1. last publisht 282. And it is given as a Rule, That if a Marriage, or Engagement be by another, by Suretiship, or the like; And this is done at my request. And after it is done, I be told of it. And I do then in Consideration thereof, promise to give Money, or do something in lieu thereof; this shall be a good Consideration to give life to the Promise, albeit it be past, Yelverton 45. And

If I have any hand in the first Contract I shall be Chargeable, as in Loan of Money, or Goods, if I say before, or at the time, if he pay you not, I will, or I pray let him have them, and then I after promise payment. But if one be in a Shop buying Wares, and after it is done, I say to the Seller, if he do not pay you, I will. So of Money borrowed; this Promise will not bind, Bullstr. 1. part 120, 121.

If my Servant be Arrested in London, and two of my Friends without any privity become Wayl for him; And after I do promise them for their Friendship, to save them harmless from all Damage and Costs, &c. If they be after charged with the Debt, by this they cannot have this Action against me. But if I had requested this of them

them before, and assumed after, perhaps it may be otherwise. As if I in Consideration that you have married my Daughter at my request, say, I will give you Twenty Pound; this is a good Consideration and Promise, Dyer 272. 12 H. 8. 112. Jac. B. Broo. 106. Croo. 1. 295. But if I say to B. I become Debtor to you for the Debt of I. S. this is Nudum pactum, Dyer 20. pl. 131. And yet if I sell Goods, and have not delivered them, and another promise to me, so I will deliver the Goods, to pay the Money; it seems this is a good Consideration, and that an Action will lie, 12 H. 8. 11.

Consideration of a Marriage past.

In Mich. 37. & 38 Eliz. Co. B. between Jenny and Goochman. It was Adjudged, That if one declare, that he in Consideration Quod deliberasset & dedisset to the Defendant Twenty Sheep, he assumed, &c. that this was not good, for that it was past. And Pasche 8 Jac. Co. B. One declared, that in Consideration that he had sold to him a Horse, he promiseth to pay him; it was Adjudged nought, Mary Andrews C. se.

If A. promise to B. that in Consideration B. hath lent him a Hundred Pound at a day past, that he will pay it to him; this was doubted, Hill. 44 Eliz. Co. B. Dogget and Bowill. But agreed by all the Judges, Mich. 11. Car. 1. B. R. That if he had laid a Request, and the Case had been so, that the Action had layen. But if a man of his own Head and Courtesie will do a thing for me, I cannot have an Action for this. But if one be about to Buy Goods, or Borrow Money of me, and another before the Sale, or Loan, tell me, that if the Buyer or Borrower do not pay me, he will, or if he bid me deliver the things, and if the Buyer pay

pay me not, he will pay me upon request; These are good Considerations. But otherwise it is where the Promise comes after the Forrowing, or Buying, 12 H. 8. 12. 44. Ed. 3. 21. But in these and such like Cases, there must be a Demand of the Debt by me, before I bring my Action.

Demand.

One in Consideration, that I have sojourned him at his request, and will sojourn him a Year, both after promise me Twenty Pound. this is good for all, for here is a time to come, Adjudged Trin. 14. Jac. B. R. Cotten and West.

If A. B. in Consideration that I have Sealed a Release of a Debt to him due from I. S. upon the request of A. B. promise to pay me the Money, if I. S. do not; it is said to be resolved, that this Consideration is good, albeit it be past. So because I was Bail for his Servant, that he will save me harmless; So because I have at his request granted to him, the next aboydance of a Church, it is said these are good Considerations, Croo. 1. part 296 Dyer 372.

Past.

It was agreed in Rainfords Case 28. Eliz. B. R. That if A. requested B to Heale a pox man. And after he is Healed, A. promise to B. that in Consideration, that he did it at his request, he will give him Ten Pound; That this is a good Assumpsit.

The Plaintiff declared, that whereas he had Bought of the Defendant three parcels of Land 10. Decembris, afterwards 19. Decembris assumed to make him a good Assurance thereof before such a day, and it was Adjudged good, and for the Plaintiff, Croo. 1. last published 138.

Confide-
ration
past.

Part 21.

If I Sell Cheese to the Son of I. S. and the Father pray me to deliver the Cheese to his Son, and assume

assume that if his Son do not pay me for it, he will; This is good Consideration and Promise, on which I may have this Action, Croo. 1. last published 700.

If I promise to another, that in Consideration he hath at my request, by his Deed, given and granted to me, the first and next Avoidance of the Church of B. assumed to pay me, One Hundred Pounds; This is a good Consideration and Promise, on which I may have Action, Croo. 1. last published 715.

If one in Consideration, that I will Sell him three Cows, for Ten Pound, promise to pay me the Ten Pound at Easter following, and if he fail, that he will pay me a Hundred Pound upon request; This is a good Consideration for the Recovery of the Hundred Pound, Croo. 1. last published 747.

If I. S. assume to me in Consideration, of divers Sums paid to me, that if Cooper at his return from beyond Sea, shall affirm that he received of me Twenty Pound, that I. S. will pay me the Twenty pound, this is good, and if pursued will bear Action. And in this Case notice will not be necessary, Croo. 2. 492, 493.

And it hath been agreed by the Judges in B. R. That if one promise me that in Consideration I have at the request of I. S. solicited the Causes of I. S. or sold my Land to I. S. or entred into such a Bond, he will, &c. That every one of these is a good Consideration.

But if I promise to another Twenty Pound, because he is my Kinsman, Blood, and Acquaintance, which is a thing past, this is no good Consideration, Plow. 302. 309.

If I being a Taylor, have made a Garment for

Nudum pactum: Consideration past To deliver goods to pay Money.

Consideration. Delivery of goods. Promises to pay the Money. Consideration. grant of the next avoidance promise to pay Money. For Cows sold, to pay me Money.

That for Money paid, if it shall be affirmed, he will pay it.

Consideration valuable.

one, who doth promise, that if I will deliver it to him, he will pay me, as much as it was worth the doing, it is a good Promise, Croo. 1. 55.

That for a Statute delivered to me I will pay Money.

If I have a Statute, and one desire of me to see it, and to keep it, and that he will deliver it to me in Six days, and in Consideration thereof promise that if he do not Re-deliver it within the time, that he will pay me a Thousand Pound upon request; this is a good Consideration and Promise, to give Action, Croo. 1. last publisht 74.

That in consideration of discharge of a Prisoner, he will pay money.

If one be illegally Arrested upon a Warrant, and he, or another for him, promise the Plaintiff in the Suit, that if he Discharge him of the Arrest, he will pay him Ten Pound upon request; This is no good Consideration, Yelverton 25. Vivian and Skiping M. 10. Car. 1. B. R. upon Assumpsit. In Consideration the Plaintiff did assume to stand to the award of I. S. and I. D. and if he failed to pay Forty Pound, the Defendant assumes to pay Forty Pound, if he did not perform, &c. this is a good Promise and Consideration, Croo. 1. 280.

To stand to an Award in consideration of Money.

So if it be in Consideration, that he will submit to the award, &c. See for this Submission, Croo. 1. part 460. See for this, Croo. 1. last publisht 70.

And if two submit to the Award of a third Person for all Differences between them without any Assumpsit, this will be Actionable, if they do not perform it when it is made, Croo. 1. last publisht 70.

Consideration, to shew a Debt of Rent, and he will pay it.

If one owe me Money for Rent behind, and I demand it, and he doth assume, that if I can shew him a Debt that the Rent is due, that he will pay me the Rent and Arrearages thereof; this is a good Consideration to ground an Action, if I do shew

ſhew him the Dēd by which it was due, &c.
Croo. 1. 67.

If A. B. in Conſideration that I will aſſure certain Land to I. S. at his requeſt, aſſume to me, that if I. S. do not pay me upon requeſt, Ten Pound and Ten Load of Faggots, that he the ſaid A. B. will pay me; this is a good Conſideration and Promise, Croo. 1. laſt publiſh 85.

If one in Conſideration I will make him a Leaſe of ſuch Land, aſſume to pay me Twenty Pound, this is not a good Conſideration, for by this he may make a Leaſe at will only, Croo. 1. laſt publiſh 565.

That I will make ſuch a Leaſe, he will pay me Money.

I being bound to I. S. in an Obligation of Forty pound, to pay Twenty pound, and it is forfeit. And I deliver Ten pound to A. B. to the intent he ſhould pay it to I. S. in part of payment without any delay, and he in Conſideration thereof promiſe ſo to do, but doth it not; I may have this Action, for the Conſideration is good enough, Croo. 2. 667.

That in conſideration I have delivered him Money, to pay it.

If one have Goods of mine, and in Conſideration that I will forbear them, promiſe to deliver them within Six Months; this, it ſeems, is a good Conſideration and Promise. Croo. 1. laſt publiſh 388.

Forbearance of Goods to pay Money.

If one let me a Cloſe for two Years, and for this Leaſe, I promiſe to pay Six and Twenty pound, and for this the Leſſor doth promiſe to diſcharge and ſave me harmleſs, from all Charges, Troubles, and Incumbrances. This is good, and Actions may ariſe on either ſide, but if any Action be brought for any Trouble, or Incumbrance, it muſt be ſet forth, what it is, and by whom it was granted, Croo. 2. 444.

That for a Leaſe made, and Money paid to me, I ſhall ſave him harmleſs, &c.

That if A. shall desist his suit for such an Office, if I can get he will pay me so much.

That if I will let him have such a house, he will pay me so much. Money promised to do a good work. Consideration past.

Money promised to take care of a sick man. Money promised to him that shall lay it out for another.

If I be a Suitoꝝ foꝝ the under-Sheriffs Office, and another man Sues foꝝ it also, and he promise me that if I desist my Suit foꝝ it, and he obtain it, to pay me Twenty pound foꝝ such a Gelding I have delivered to him; This is a good Promise, and the Consideration good and valuable, Croo. 1. 612.

If one Williams hath the possession of a House, and A. B. in Consideration that I will endeavour to procure Williams to permit A. B. to have the possession and profit of the House, A. B. doth assume to give me Twenty pound if I shall procure Williams to do, as before, Yelverton. 11.

If one promise to one that is a Physician, so much to Heal a poor man of his Disease, or to a Labourer so much to amend an High-way, he may have this Action foꝝ the nature of the Work, so to do any such like good Work, and he do it; he may have this Action foꝝ this. And it is said, if a day be set foꝝ the payment of the Money, that the party to whom the Promise is made when the day comes, may sue foꝝ it before the work is done, Doct. and Stud. 105. Flow. 35. 17 Ed. 4, 5. Hobb Rep. pl. 278. But Quære, unless there be a promise by the party to me to do the Work, except the goodness of the Work supply and make it out a Consideration in Law, Owens Rep. 94.

If a Friend of mine be Sick in an Inn, and I come to the Inn-keeper, and bid him see to him, and provide necessaries foꝝ him, and I will see him paid foꝝ it, this is good, Bolstr. 3. 31.

If A promise to B. to pay him such Money as he shall disburse out of his own Money foꝝ Cloth, to the use of A. this is a good Consideration; foꝝ by the Buying of the Cloth to the use of A. the pro-

perty

percy is in A. presently, 9 Jac. B. R. and Moore Survey of the Law 98. And he need not Aver that the the Cloth came to the use of A.

Avermen.

If I promise to another in Consideration he will lay down his Money to pay for Cloth bought by T. S. for me, that I will pay it him again; this is a good Consideration and Promise, Trin. 9 Jac. B. R. Moores Case.

If one in Consideration that I will Travel with him from B. to London, to help him to search for the Will of W. Stacy, that he will pay me Four pound for my Journey; this is a good Assumpsit to give Action, Croo. 2. 619.

Money
promise
for work
done.
Part 22.

If I promise in Consideration of something past to one, as in Consideration that he hath Will'd me a House, or guilted me of a Trespass, or delivered my Friend Wares, that I will pay him Money, or do something else; this is Nudum pactum, Plow. 5. 302.

Consideration
past.

So if I say to another, to whom I. S. doth owe Money, if he do not pay you, I will pay you, this is Nudum pactum, Doct. and Stud. 105. 12 H. 8. 12. Dyer 21. 27. this hath been often Adjudged, So if one promise me, that if I will deliver him a Hundred Crowns, that he will deliver them to me again, But if I deliver to one Twenty Crowns, and in Consideration thereof, he doth at the time of the delivery thereof, promise to Re-deliver them to me again; this is a good Promise, Adjudged.

If one, the Eighth of May deliver me Ten pound, and I the Ninth of May in Consideration hereof, promise to pay him the Ten pound; this is no good Consideration. But if it were at the same time, it were good, Mich. 42. 43 Eliz. Pilsworth's

Case.

Case. And yet if I Sell all my Lands, or all my Goods, and nothing is appointed by the Agreement, what I shall have for it; it is said, this is a good Contract, and I may Sue for the worth; for it, Croo. 1. last published 42. (This else where.)

One declared, that whereas Huldge was Sued in the Queens Bench by Cheeke, and the Plaintiff and I may Sue for the Defendant became Surety for him, that Cheek recovered, and had Execution against the Plaintiff; the Defendant afterward promised the Plaintiff, that if Huldge did not pay the Money which the Plaintiff had paid to Cheek, that the Defendant would pay it, and Avers, that Huldge did not pay it, nor the Plaintiff upon Request, &c. And it was Adjudged for the Plaintiff, albeit the promise was not made at the time of the Request. And there seemed to be agreed, That if I promise one that hath served me, I will give him Ten pound. And that if I retain one to serve me, and he doth for a Year; and if one after the Year promise in Consideration he hath served him, to give him Ten pound for it; Action lieth, and yet the Contrary is said to be held by some. But if one agree to serve me a Year for Twenty Shillings Wages, and at the Years end I give him his Twenty Shillings, and then promise him Twenty Shillings more; this is Nudum pactum, Croo 1. last published 42. For an Assumpsit grounded upon a Consideration which is past before the promise made, is good, if it be alledged to be made at the instance, and request of the Defendant, Pasche 24 Car. 1. B. R. Stiles Register. If I request one to Solicite a Business for me, and after he hath done it; I promise him Ten pound for it; it is held, this is a good Contract.

For Service done;

Nudum pactum.

Verba

Detaction: Otherwise if it be as a mere voluntary Courtessie, Hobbs Rep. pl. 128. 72. Dyer 355. And it is said to be Adjudged in this Case to lie, where I do request B. to Bail my Servant, and after I say to him, in Consideration that you have at my request Bailed my Servant, I will pay you Ten pound such a day; that this is good, Brownl. 1. part 7, 8. 73. Dyer 272.

If one become Bail for my Servant, and after it is done, I promise to save him harmless, no Action will lie upon this, Survey of the Law 94.

A. Such and set forth, that he Sold a Horse to B. such a Day, Year, and place to be paid at a day to come, and that the Defendant Ad tunc & ibidem ratione premistorum assumed to pay the Poney, &c. this is not good, for the Contract, and giving of day to B. was not Ad instantiam of the Defendant, but compleat before, Pasche 9 Jac. B. R. Farmer and Field. Survey of the Law 97.

And yet one did Declare, that in Consideration, that he had Sold a Horse to him, that he would pay him five pound; and this is said was Adjudged good in the Exchequer Chamber, albeit it did imply time past, Pasche 8 Jac. Co. B. Mary Andrews Case. (A. B.)

One declared, that I. S. emisset equum, at such a price, and the Defendant Ad tunc & ibidem ratione premissarum did assume to pay the Poney, and it was Adjudged nought, for the Sale was before the Consideration, Pasche 9 Jac. B. R. Farmers Case.

If one promise me, that in Consideration I was bound for him for a Debt, that he will pay me the Poney such a day; this is good, Croo, part 2 18.

If A. deliver to B. the Eighth of May a Hundred twenty Crowns, and the fifth of May as many

many more, and B. in Consideration thereof the Ninth of May did assume to deliver six Shillings for every Crown in Shilbr, upon a Non-Assumpfit, Verdict was given for the Plaintiff, and the Damages entire, and Judgment given, but Reversed for this Cause; for the Assumpfit goeth only to the last Deliverer, Mich. 42, 43. Eliz. Pillworth and Seal's Case.

About a
Marriage.

Conside-
ration
past.

Money
promised
in Marri-
age.

Money
promised
in Marri-
age.

If I marry a man's Daughter, and he doth after, in Consideration thereof, promise me a Hundred Pound, I may have this Action, especially if the Marriage be laid to be at the request of the Defendant for the affection doth continue, and her Advancement before was Consideration enough, Croo 1. last published 59. And there it was said to be Adjudged in the Exchequer, that a promise of Ten pound in Consideration of Council given to one was good, though the Council was given before.

If one promise me Ten pound if I marry his Daughter, I may have this Action, Doct. and Stud. 104. A. 16 H. 7. Frahibition 22. Lib. Intr. 2, B. Sect. 2. and 4.

If A. be to marry B. and C. living with A. saith to B. that if she shall marry A. and his Father shall not make such a Joynture to her, he will give her a Hundred pound; B. doth marry A. the Joynture is not made; in this Case A. and B. may have this Action against C. for this Hundred pound, Mich. 29 Eliz. B. R.

So if A. promise to B. a Hundred pound, in Consideration that he shall marry his Daughter, Trin. 29 Eliz. B. R. March. and Rainford. Survey of the Law 93.

If A. promise to B. that whereas his Son is a Suitor to his Daughter, if B. will give his As-
sent,

sent, that he will give B. Fifty pound; this is a good Consideration, and B. may sue for the Money, Trin. 12 Jac. Co. B. Griesly and Louthen.

A. promisseth to one Fifty pound if he marry B. Notice, he may sue for this, and need not shew that he gave notice of the Marriage, or make request for the Money. Mich. 7 Jac. B. R. Brenly and Jodd. Pleading. Survey of the Law 92.

A. having speech with Eliz. Suckley about Marriage, promisseth to M. the Daughter of the said Eliz. that if she marry him, without disposing of her Estate, he will give to M. in Marriage Forty pound; this is good, and an Action will lie, if she Averment
Aver that she hath not disposed of her Estate, Mich. 15 Jac. B. R. Kings Case.

If A. promise to B. Twenty pound, if he marry C. and he do so, he must give notice of it to A. Notice.
But a Taylor may have an Action without giving Money for of netire what he doth describe for the making of his work.
his Garment, Hill. 12 Jac. B. R. Hall and Heming. Survey of the Law 98.

If I promise to one, so he will marry my Money
Daughter, Kinswoman, or Servant, or if he promised
will marry my Daughter, Kinswoman, or Ser- in Marri-
vant, that I will give [or pay] him Twenty age.
Pound; or if I promise him Twenty Pound in
Marriage with my Daughter; in all these Cases
the party may have this Action against me for the
Money, Plow. 205. Fitz. Propri. 3. Doct. and
Stud. 104. And it is said, That if I promise one Considera-
a Hundred Pound in Consideration that he hath tion past.
married my Kinswoman, Daughter, or Servant, Part 23.
that this Action will lie for this, for the Cause
doth continue, Mich. 8 Jac. B. R. per Curiam. and
M. 4 Car. 1. B. R. And yet against this it is said

to be adjudged in the Exchequer Chamber between Sandill and Jettoy; That if I intreat one to Marry my Daughter, and after the Marriage say, That in Consideration he hath at my request Married my Daughter, that I will pay him Ten pound such a day, that this Action will not lie for this. But it seems the Law is taken otherwise, See Croo. 1. last published 59.

Goods
promised
in Marri-
age.

If I promise to a Woman, that if she will Marry with my Son, I will give her to Marriage the one half of all my Goods; this is a good Promise, and Actionable.

I and pro-
nised in
Marriage.

If one promise to me a Woman, that if I Marry such a man, he will assure me such Land, &c. for my life, and I do Marry him; this is good, and my Husband and I may Sue for the Breach of this Promise, Bullstr. 2. part 269. 279.

If I promise to another Twenty Pound with the Marriage of my Daughter; it hath been said that no Action will lie for this at Common Law, but it seems the Law is otherwise, Plow. 70. 305. Doct. and Stud. 104. F. N. B. 44.

Money
promised
to the Mo-
ther to let
me have
her con-
sent for
her Daugh-
ter.

If I promise to a Woman having a Husband, who hath a Daughter and Heir to Land, that if she will give her Consent that I shall have her Daughter, I will pay her Ten Pound; this is a good Consideration, Adjudged. Hobb Rep pl. 20.

Nudum
pactum.

Nudum
pactum.

And if there be none of all this, nor some of such like thing in the Case to move the Promise, then it is Nudum pactum ex quo non oritur Actio, And therefore if one promise to give me Twenty Shillings, and I give him nothing for it; I may not have this Action upon this Promise; but if I have given him a Penny, or a Pennys-worth to endure the Promise, this Action will lie.

Chap. 4: about a Contract, or Assumpſit. + 332

So if one promise to pay a Debt to I. S. which Debt is owing to I. S. by G. D. this is Nudum pactum, for want of Consideration, and if he pay it not, no Action will lie against him for it upon this Promise, Scales Regist. 75.

If one promise to build me an House, make me an Estate, or any such like thing, and there is nothing given, or promised by me for it: this is no good Assumpſit, and Nudum pactum. And where one hath promise to do a work by a Day, and it is not agreed, what he shall have for his pains, or when; or if it be agreed, no part of the Money is paid; in this case the one cannot sue for the not doing of the Work, nor the Workman for his Money, till he hath done the Work. But if there be mutual promises, by the one to do the Work, and by the other to pay the Money; there, either of them may have an Action against the other at any time, 3. H. 6. 36. Dyer 21. Plow. 5.

If one owe Money to me, and he promise me, that in Consideration that I will agree to give further Day for the Money, he owes me for six Moneths, that he will leture it to me; this is no good Consideration, for I may agree to give Day, and sue him after, M. 7. Jac. B. R.

A. doth promise Ten pound to B. if he suffer C. to enjoy Land; there, although C. enjoy it not; yet if A. Agree, and do not interrupt C. It is said, this Action lies, Pasche 15. Jac. B. R. Taylor and Wilks. Quære of this.

If I promise Twenty pound to a man, in Consideration that he will not beat me; this it seems, is no good Consideration, 21 Jac.

If I promise to one Twenty pound, because he is my kinsman or Acquaintance, this is no good

Recipro-
cal Acti-
ons.

Confide-
ration of
further
day given.
Promise
to pay.

Sufferance
to enjoy
Land.
Promise of
Money.

Promise of
Money not
to beat
me.
Nudum
pactum.

Consideration to raise an Action; Plow. 302. 309.
 Q. I promise to give one Ten pound, because he
 is my Son; this is not good.

Promise to
 pay Money
 if he not
 shall sur-
 render
 Land.

A. being a Coppelholder, makes B. his Execu-
 tor, and intends to surrender, to the intent that B.
 should satisfy a Debt to D. hereupon the Son of
 A. promises, that if he do not surrender, but suffer
 the Land to descend, he will satisfy the Debt. A.
 dies, B. shall have an Action against the Son; for
 it is a good Consideration, Hll. 9 Jir. B. R. Gray
 and Grav. Survey of the Law. 96.

Promise, if
 he pay
 Money, to
 pay it him
 again.

If A. and B. be bound in a Bond jointly, and
 severally to pay Money, and in truth A. is princ-
 pal; and A. saith to B. pay the Money to the Ob-
 ligee, and I will repay you; this is a good Promise,
 and if A. pay it, he may recover it again by this
 Action, Adjudged. 9 Cir. B. R.

Forbear-
 ance, pro-
 mise to
 pay.

If one be bound by Obligation to me, to pay
 I. S. Money on such a Day, and the Obliger before
 the day promise, that if he will forbear him till
 such a Day, he will pay it; this is no good Consi-
 deration, for I. S. had no cause of Suit per Justice
 B idgm. p.

Infant
 promise at
 full age,
 upon for-
 bearing
 to pay it.

If an Infant buy Wares, or other unnecessary
 Apparel, and when he comes to his full Age, in
 Consideration that he had a good Bargain, he doth
 promise, if the other will forbear him a Month, he
 will pay him; this is no good Consideration, Ad-
 judged. 30 Eliz. Withpols Case. Stiles Rep.
 184.

Natum
 pactum.

If I without other cause promise to give one
 Twenty pound towards his Losses by Fire, or to
 build his House anew; these are not good Assump-
 tions to give Actions, 17 Ed. 4. 4. Plow. 308.

So if I. S. owe me Money, and another tell, he will be my Pay-master, and pray me to take him Debtor for it; this is not a good Consideration nor Assumpsit: Fitz. Debr. 126.

So if one promise me Twenty pound, because I have built him a House; or if one owe me Twenty pound, and another come to me, and pray me to take him Debtor for it: Or if he say, that if the other do not pay me at Michaelmas, he will; these are not good Considerations to raise Actions, 9 Ed. 4. 14. 44 Ed. 3. 21.

If one be about to buy Goods, or borrow Money of me, and another man before the loan, or sale, tell me that if the Buyer, or Borrower pay me not, he will pay me; or if he bid me deliver the things, and if the Buyer pay me not, he will pay me on request; those are good Considerations and Assumpsits. But otherwise it is, where the Promise comes after the Borrowing, or Buying. 11 H. 8. 13. 44 Ed. 3. 21. But in these Cases there must be a demand made of the Money from the Surety before the Action can be brought.

Confide-
ration
past.

Demand.

A. doth promise to pay B. for his reasonable board, for such time as he shall be with him. B. sets forth in his Declaration, that he was with him Ten moneths, and that five Shillings a moneth is reasonable, amounting in all to Fifty Shillings; in this case it was held good, 30 Eliz. B. R. Floyd and Irish. Survey of the Law. 96.

For Ta-
bling and
Lodging,
promise of
pay.

Part 24.

A. being sick in an Inn, B. doth promise to pay as much as shall be due for all necessaries that the Inn-keeper shall provide for A. this is good; and the Inn-keeper in his Court need not shew the things he did provide, but to say that he did provide necessaries untill such a day, &c. in all to the

Promise to
pay for
looking to
a sick man
Court.

De'ne

value of Twenty pound, Pasche. 13 Jac. B. R. Crips and Baynton. Survey of the Law. 96. 97. So of a Physician by Dodridge.

Promise
to deliver
Corn for
Money to
be paid.

If one for Forty shillings paid, assume to deliver me Forty quarters of Corn, at such a time and place, for Ten pound to be then paid to him, and if I bring the Money to the place at the time, and tender it, I may sue for the Corn; and if he bring the Corn, he may sue for the Money, Co. 4. 93. Plow. 182.

Consideration
of goods for
goods promised.

Goods, or a promise of Goods may be a good consideration for Goods, or a promise for Goods, as well as Money, Fitz. D. bc. 68. But if there be none of this in the Case, it is but Nudum parum.

Not to enter a
Caveat, promise to
pay Money.

If one promise me in Consideration that I will not enter a Caveat against the Probate of the Will of I. S. that he will pay me Ten pound; this is a good Consideration, whether I have any cause or not. So adjudged in the Exchequer Chamber.

To become
bound for
another, he promises
to be bound to
me.

If A. owe to B. Four score pounds, and A. in Consideration that I will be bound for the Money with him to B. promise to enter into a Bond of a Hundred pound to me, and I become bound with him; this is a good Consideration to give an Action to me upon the breach of his promise, Adjudged. Mich. 9 Jac. B. R. Knevats Case.

Promise,
consideration
of a Promise

A promise may be a Consideration of another promise; for one promise made in Consideration of another promise made at the same time, and each party may sue at any time upon the promise made to him. But if they be made at several times, they are both void. Hobb. Rep. pl. 16. 116. M. 2. Jac. Co. B. Somes Case. Brownl. 1. part 10. and Mich. 4. Jac. B. R. Cadells Case.

So if one owe me Twenty pound on a Bill,
and

and I promise him to deliver him the Bill, and he promises to give Bond with Two Sureties to pay the Money by a Day, 38. 39 Eliz. Gowers Case.

If I have a Judgement against a man for Twenty pound, and I promise him that if he will pay me the Money, I will give him Five pound; this is a good Consideration, to give an Action upon my promise, for it will be cost and trouble to me to get it. Trin. 38 Eliz. Dixon and Addams.

So if one have taken away my Goods from me wrongfully, and I promise him Ten pound to let me have them again; this is a good Consideration. Adjudged. Pool and Clipson's Case Temp. Car. 1.

If one say to me, that if I will depose before the Mayor, of A. the truth of what I say and affirm, he will pay me Twenty pound; this is good, and if I do voluntarily depose it before the Mayor, I may recover the Money in this Action, Hill. 38. Eliz. Co. B.

If one be in Execution at my Suit, and another say to me deliver him out of Execution, and what it costs you, I will repay; this is good, and being Executed, in the consideration, will be Actionable, Croo. 2. 483.

If one have a Judgement against me for a Hundred pound, and he promise me, so I will pay him Fifty pound, he will acknowledge Satisfaction, or Release the Execution of a Hundred pound by a Day; this is a good consideration to give an Action, if it be not done. Adjudged. Cook. and Harve's Case. Adjudged. Mich. 38 Eliz. Co. B. Reynolds and Pinham's Case.

If A. owe to B. Twenty pound, and C. say to A. pay him his Twenty pound, and I will pay it you again; gainst him

To give me my own without Suit, promise to pay Money. To take a voluntary Oath.

Promise to pay Money upon discharge of a Prisoner

To receive part of a Debt, a promise to discharge the whole.

Promise to pay Money against him

that shall
pay for
me.

To pay
part of a
Debt after
it is due,
promise
to deliver
the Bond.

again; this is a good Consideration and promise,
Adjudged. M. 7. Car. B. R.

If I be bound in a Bond of Twenty pounds, to
pay Ten pound by a Day, and fail at the Day, and
after the Obligee bid me pay Twelve pound to
l. S. and he will deliver the Bond such a Day;
this is good to raise this Action, if it be not delibe-
red, Harveys Case 4. Jac.

If one be bound to pay me Money on a Bond at
a Day, and I promise him, if he do it, I will give
him his Bond to be Cancelled; this is a good con-
sideration and promise, Croo. 1. part 5. And if the
promise be to give him Five pound, if he will pay
it the morning of the Day; it is a good Consider-
ation, Croo. 1. 5.

Delivery
of my
own goods
promise
to deliver
them.

Money
promised,
to pay me
my own
Debt:

Of a debt
certain,
promised
to be paid

If one that hath my Goods, promise me, so
that I will let him have them for a moneth, that
he will deliver them to me; this is a good conside-
ration to have an Action, if he do not deliver them,
Pasch. 37 Eliz. Co. B. M. y and Alters.

If one be bound in Bond, to pay me Five
pound on a Day, and I promise him Ten shillings,
to pay me the morning of the Day; this is good,
Croo. Rep. 1. 5.

If one in consideration that he doth owe me
Five pound Rent, on a Lease of a ground for a
Year, or on a Bond, promise to pay it to me on
Request, it seems, this is not a good Considerati-
on, for it is real and certain, Hobb. Rep. pl. 365.
And I may have an Action of Debt for my Money.
And yet, it is said to be adjudged, that if one in
Consideration, that he doth owe me Five pound on
an Assumpsit, or Contract, promise to pay it me
such a Day, that this Action will lie for this, sed
Quare, and see the Cases after, where the contrary

Forbear-
ance of
it for a

is

is held. But, if a man be indebted to me a certain Sum, for a Rent, or on a Bond, and promise to me in Consideration of Forbearance of the Debt some certain time, that this Promise may be good, Adjudged so.

If my Debtor, who hath Statutes from other men, deliver them to me, towards my satisfaction, and die; and one that is neither Executor nor Administrator to him, request him to deliver him the Statutes, and he will pay the Debt; this Consideration is good enough. But if the Request be by, and the delivery to the Executor or Administrator, who hath right to them; it may be doubtful, Hobb. Rep. pl. 7.

Promise to pay a Debt for delivery of Statutes

If a Terre-tenant promise to me, in Consideration that I do assign to him a Statute I have chargeable upon his Land by way of Discharge, that he will pay me Twenty Pound; this is a good Consideration to produce the Action. But if the Assignment of it were to be to a Stranger, there it seems otherwise, and that the Consideration were not good, Adjudged. Pasche 38 Eliz. Berrow and Gray.

Upon Assignment of a Statute.

If one, having made me a Lease for Years, assume that I shall quietly hold it, without the Let of any Person whatsoever; this is a good Promise, and Disturbance with, or without a Title, is a Breach of it to give Action, Dyer 328.

Promise that I shall enjoy a Lease.

If one in Consideration that I will be Bound for his appearance, being Arrested upon a Recognisance, promise me to appear at the day, and do not; I may have this Action against him, and it will not excuse him; that a Certiorari came to remove the Record, for he must appear notwithstanding, Adjudged. Trin. 9 Jac. B. R. Rolls Case.

If

Enlarge-
ment out
of Prison.
Promise to
Seal a
Bond.

If one be Arrested at my Suit for a Debt, and make an Obligation for the Money, to pay it at a Day to come, but doth not Seal and Deliver the Obligation to make a Deed of it: But in Consideration of his Enlargement out of Prison, doth promise to Seal and Deliver it upon Request; this is a good Assumpsit to produce an Action, Pasche 9 Jac. B. R. Bassets Case.

Promise to
keep Pri-
soners safe.

If a Gaoler promise to me to keep his Prisoners safe, and I am the Sheriff, and he lets them escape; this perhaps may be good, without any Consideration at all, for he is Bound by Law to do this, Regist. 1 to. A.

Pledge de-
livered,
promise to
pay.
Court.

If I have Goods delivered to me in Pawn, and C. desire me to deliver the Goods Pawned to him, and he will pay me the Debt, for which they were Pawned; this is a good Consideration, and the certainty of the Goods need not to be shown in the Court; as in Case where Goods are Demanded, or Damage for them, Brownl. 2. part 274. Levets Case Adjudged.

Forbear-
ance of a
Debt, or
Suit.
Part 25.

If I be an Executor, and my Testator were in Debt on a Simple Contract, or Assumpsit, and I promise the Creditor, that so he forbear me for such a time, I will pay him, this is good. So the Consideration of the Forbearance of a Chancery Suit against me for such a time, is a good Consideration; Croo. 2. 47.

If one owe me Money on a Bond, and owe another Money upon a Bond, and both Debts are due, and he in Consideration that I will forbear my Debt till such a day, and that I will Compound with the other for his Debt and Interest, doth assume to pay me, &c. this is a good Assumpsit, Croo. part 1. 198.

If the Son of A. B. be indebted to mee on a bond of eighteen pound to be paid at a day, which is not paid, and the Son moves his Father to pay it, the Father, in Consideration that I will give him a longer day, doth promise to pay it, and I will give him a longer day; this was adjudged in the Kings Bench a good Consideration: But the Judgment was Reversed in the Exchequer Chamber, because it was not good, Croc. 1. last published 163.

If A. be Indebted to me, and for payment thereof, deliver me Goods, and C. in Consideration that I will deliver him the Goods, promise to pay me the Money; this is a good Consideration and Promise, Brownl. 1. part 3.

If the Terre-tenant of Land promise me, in Consideration that I do assign to him a Statute I have chargeable on his Land, by way of discharge, that he will pay me Twenty pound; this is a good Consideration and Promise. But if it were to Assign it to a Stranger, contra; for this were Maintenance, Adjudged. P. 38 Eliz.

A Tenant-at-will of Land Sold, surrenders to him a Reversion, and for this he promiseth; it seems, this is no good Consideration; for he might have had it without any Surrender; for he may determine the Lease at his pleasure. But if he be Tenant for Years, it is otherwise, Brownl. 1. part 6.

If one promise to a Parson Money for Tithes, and he doth that afterwards, by which he loseth his Tithes and Parsonage; in this Case there is no good Consideration; and therefore no Action will lie upon the Promise, Bullstr. 1. part 111.

If I say to a Chirurgion, Cure such a one, and I will pay you for the Cure, Bullstr. 2. part 269. this is a good Promise.

Of the
of the
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Upon the
delivery
of Goods,
a promise
to pay.

Assign-
ment of a
Statute.

Nudum
pactum.

Action
gone.

Promise
for a Cure.

Promise to
deliver
Beasts to
pay Mo-
ney.

If I take a mans Beasts Damage-feasant, and another promise me, that if I will deliver the Beasts, he will satisfie me for my Trespas; this is good. But if I Sue, I must say to what Value my Trespas is, Bendl. 90.

If one say to me, deliver such a Perchaunt to Cloth, if he do not pay you I will, Bulstr. 2. part 269. 279.

Promise
for Schoo-
ling.

If I say to a School-master, Teach such a one, and I will give you so much for your pains or Build such a House, and I will give you so much Money for it, this is a good Consideration and Promise, And it is not considerable in these, and such like Cases as these, whether he that doth promise have any benefit at all by it, if he to whom it is made, have loss, Bulstr. 2. part 279.

Upon Ac-
count.

To say, that upon Account between them, the Defendant was so much Indebted to the Plaintiff, that the Defendant, in Consideration that the Plaintiff would forbear it for such a time, did promise to pay it, is a good Declaration, Goldsb. 48. 6.

Forbear-
ance.

To say, that the Defendant was Indebted to him, and in Consideration of the Forbearance thereof, promise to pay it, Co. 10. 77. Cro. 1. Rep. 82.

Promise to
buy goods
for me, to
pay it a-
gain.
Property.
Count.

If I desire another to buy Goods for me, and promise to pay him again what he shall lay out, this is a good Promise, and the Consideration good. And it seems, as soon as the Goods be Bought, the Property of them shall be in me, and I may take them. And in an Action brought for the Money, it is good to shew that the Goods came to my use, Bulstr. 1. part 169.

Promise,
if he pay

If one owe me Money on an Obligation, and I

promise him, if he pay me my Money at the day, I will deliver him up his Obligation Cancelled; this is good. Croo 1. Part 7.

my debt, to deliver up the Obligation.

If there be talk of Marriage between Fulwood and a Widow of London, and in Consideration that I will give my Assent, that the Father of the Fulwoods should convey to Fulwood all his Lands and Chattels, Fulwood promised to pay such a Sum of Money to me, as their Father shall Assent; it seems it is good, and I am to Avert nothing, but the Father did assent and appoint such a Sum of Money to be paid, Fulwood's Case. Brownl. page 32.

Part 26. Consideration to agree that the Father shall settle his Estate on his Son.

If a man be indebted to me, and promise to pay me his debt such a day; in some Cases I may have this Action upon such a promise. But in such

Averment Upon an Indebitatus Assumpsit.

Actions as this, the cause of the first debt, as for Wares, Herbage, or upon a Promise, the like is to be set forth in the Declaration. And therefore to say, in Consideration that the Defendant was indebted to him without more, he promised him payment at a day certain, is not a good Declaration. For it may be the first Debt was upon

Averment

a Record, or for Rent upon a Lease for Years, or upon an Obligation, and then no Action will lie upon the Promise, Bulstr. 1. part 67. Croo. 1. part 3. 11. Croo. 2. part 106, 107, 108.

Rent.

And if in the last Case, it be pleaded to, and tried for the Plaintiff, yet this will not make it good, but it is allowable for Error, Adjudged. Pasche

2 Car. 1. Co. B. Fosters Case. And yet if one promise me, in Consideration that I will forbear a Rent due to me by Record, or for Rent on a Lease for Years, that he will pay me such a day; this is a good Consideration and Promise, 14 Jac. B. R.

Sir

Sir George Marshall's Case. Adjudged. Hills 9 Car. 1. B. R. Bret and Heaths Case. See more chap. 13. and in this chap. Hobb. pl. 32. Croo. 10. 77. Croo. 1. last published 24. 2.

**Confide-
ration past.** A. brought an Assumpsit against B. and declared, that whereas I had promised him Thirty Pound, and he such a day had given day to the Defendant for the payment thereof, till such a day, &c. that the Defendant assumed to pay it; this is held to be a good Consideration, and that without shewing the cause of the first debt, because of the Forbearance, Hobb. Rep. 26. The wife dum sola fuit, knowing that her Husband was indebted to the Plaintiff, and the same appearing upon Account before Friends, did in Consideration thereof, promise to pay it, part at one day, and part at another day; this was adjudged a good Consideration, Margh. and Culpepper. Croo. 1. part 50.

**Nudum
pactum.**

If one Build use a House of his own Head, no Action will lie for him against me for this. But if it were at my request, and after I promise him, that because he did it at my request, I will pay him; this is good.

**To dis-
charge a
former
Debt.**

R. B. Sued A. and declared, that whereas K. L. was indebted to R. B. in Fifty pound, in Consideration that K. L. Allocavit eidem A. Fourteen pound & promissit ei ad exonerationem eundem A. Fourteen pound parcel predicti Fifty pound, the Defendant did assume to pay the Fourteen pound; this was adjudged a good Consideration, Goldsb. 49. pl. 8.

**Indebita-
tus.**

A. declared, that B. being indebted to him seven pound, he in Consideration thereof, promises to pay, &c. this was adjudged a naughty Declaration, Croo. 1. 31. So where he was indebted

to the Plaintiff Twenty pound for Rent behind, promised to pay it, Croo. 1. 250. For it is a real Contract, it may be a Rent Service, &c.

A. did Count in Assumpsit, that where B. was indebted to him in a Hundred pound, and he had Sued him in such a Court, and Arrested him, that C. the Defendant, in Consideration A. would not Prosecute him in a Suit, that the Defendant, at such a day after, Could pay him the Debt; this is good, albeit no cause of the debt he shewed, for it is but an Inducement, and Collateral to the Assumpsit of C. Croo. 2. 397.

An Attorney Sues, and sets forth, That the Defendant being in debt to him for divers Sums of Money by him laid out in other, and in his own Courts, the Plaintiff gave him a Note of the Charges to such a Sum, and the Defendant promised, that if I. S. another Attorney there present would peruse the Bill, and say it were reasonable, that he would pay it; this was adjudged a good Consideration and Promise, Croo. 1. part 113.

The Plaintiff declared, that he the Tenth of Novemb. 12 Jac. Sold to the Defendant divers Goods for Ten pound. And that the Defendant Sic indebitatus existens postea (scilicet) ultimo die Novembris, did promise, that in Consideration inde he would pay to the Plaintiff this Money at Christide, and the Plaintiff brought this Action upon the last Assumpsit, and the Court inclined to this Opinion, that it was good. And that he might Sue upon the first or second Contract, at his Election, but not upon both; for here is a Consideration continuing, Hodge and Vavisor. Trin. 14 Jac. B. R. And there it was said, That this Case was not like to that of Seek and Pillsworth.

42 and 43 Eliz. B. R. Where two exchange one with another so much Silver for so much Gold: And after, in Consideration thereof one of them promise, &c. Et in this Case of Hodges Justice Haughton held, that *Indebitatus existens pro Merchandizis ventitis*, is a good Consideration; And there in Hodges Case is a Consideration implied, Forbearance till Christide.

Indebita-
tus;

If A. be indebted to me, and in Consideration thereof, that I will give him time of payment till the first day of Easter Term, promise payment, this is good; but if I sue upon it, I must shew how the debt accrewed. For generally *Indebitatus* is not sufficient, when it is the ground of the Action; but where it is but an inducement to the Action; as here before, they being agreed upon the Debt, and it being but a Collateral Promise, it is good enough without shewing how, Croo. 2. 548.

To pay
Rent due
before.

Averment

An Action upon the Case upon an Assumpsit, lies not upon a general Assumpsit to pay Rent: But if the Consideration be to forbear the Rent till such a day, and the Promise be grounded on this; it is good, Croo. 1. 250. But by Rolls ch. Justice. If one make a Lease for Years of Land, rendering Rent, and after the Lessee promise the Lessor to pay the Rent; an Action may lie upon this Promise, if the promise be made at the time of the Lease made, which must be Averred in the Declaration expressly to be so, Sciles 400. Yelverton 20.

Confide-
ration for
the matter
of it un-
lawful.

Part 27.

If the Consideration to move and induce the Promise, be to provoke or further the doing of some unlawful Act, as *Malum in se*. As to kill, or beat a man, to burn his House, to forswear himself; or *Malum prohibitum*; as to be a Forswearer,

ler, a maintainer of Suits, or the like; this will not be good to ground an Action upon it, Croo. 1. part 113.

Or to save and keep a man harmless, whatsoever he shall do. Or if he be an Officer pro bono publico, that he shall not do his Office. Or that a man shall do against his duty in his Office; as being a Sheriff or Gaoler, that he shall suffer his Prisoner to escape. Or that a man shall not sow his arable Land. Or if the consideration be, to make to the stopping of free Trade and Traffick, or to keep men Idle, and from the labour by which they get their livelihood, and do good to the Commonwealth, Croo. 11. 53. or the like. So if the Cause be an Usurious, Symoniacal cause, to keep up, or maintain a Monopoly or the like, these will not be good considerations in Law, Croo. 1. 245. 246. Croo. 1. last publishr. 195.

And so generally, whatsoever (so; the matter of it) that in the promise shall be said to be unlawful, and shall make the Contract void, the same being in the consideration of the promise, will also make the Assumpſit void. And what will make the promise void in this. And so e converso, whatsoever (so; the matter of it) will be good and lawful in a promise, the same will be good and lawful in consideration of a promise. And what shall be said to be lawful, or unlawful in a promise. See it afterwards in Sect. 7. of this chap. part. 1. 2, 3, 4.

For if these things in Contracts put in Writings, and made Deeds, will marr them, and that the Contracts that have these kinds of inducements in them, will not bind, in that a forger in reason; they will not bind in this Case. But in

these things, wher~~e~~ver they be, they marr the Contract, whether it be made by Word or Deed, Co. upon Lit. 223. Lit. 222. 223. Perk. sect. 722. 723.

Part 28. If a Prisoner promise to a Sheriff, in Consideration he will let him escape, that he will save him harmless, or pay him Ten pound; this Consideration is naught, and the promise void. So if one promise me Ten pound, if I will maintain him in such a Suit; this is naught, Co. 10. 76. 102. Dyer 356. Bulstr. 2. part 213. Cro. 1. 157. But a Solicitor may sue for Money promised to him to sollicite a Suit, Hobb. Rep. pl. 72. Dyer 356. Cro. 1. 76.

Attorney. If I being an Attorney of the Kings bench for B. and he indebted to me in divers sums of Money by me laid out at his Request in my own, and in other Courts, in the following of his Suits, and for his Fees, and for other things as his Servant, whereof I deliver him a note coming to Thirty pound; and he, in Consideration thereof, assumed, that if I. S. an Attorney, would peruse the note, and affirm it to be reasonable, he would pay me. I. S. doth so; this is a good Consideration and Promise, and no maintenance for an Attorney to sollicite in other Courts, Cro. 1. 113.

Maintenance.

If I promise to give one Twenty pound to get me a Presentation to such a Church, being void; it seems, this is against Law, and void, Cro. 1. 245; 246, 263; Cro. 3. 83.

If one promise to me to kill a man, or burn his House, and for this I give or promise him Ten pound; this Contract is against Law, and naught, and I may have my Money again, Co. 1. 24. 6. 43. Dyer 343. Co. upon Lit. 206.

A Widow promised to one Two hundred pound to follow her Suits, and by two Justices it was held not actionable. But Dyer against them, because it did not appear they were Suits in Law.

If I claim a Title to Land, and one, in consideration that I will assign my Right and Title to him, assume to pay me Forty pound; it seems this is good, Croo. 1. part last publisht. 151.

If one promise a Sheriff, or other Officer, that hath a man in Execution for a Debt, that if he will let him go, he will pay the Money such a Day; this is void. Yelverton, 197.

If one be Arrested by an ordinary Process, and Escape. he promise the Sheriff, or some other to his use, that if he will let him go at large, that he will appear at the Day, or pay him Ten pound, it seems this is not good, but against Stat. 23. H. 6.

If a Bayliff of an inferiour Court Attach Goods, and them deliver to the Plaintiff in the Suit, to re-deliver at the next Court, and in consideration thereof, the Plaintiff in the Suit doth assume to save him harmless for the same; this consideration and promise is against Law, and void, Croo. 1. part last publisht. 230.

If I for Debt sue one to out-lawry after Judgment, and having taken out a Cip. u. iagar. in consideration that I will forbear upon it, one I. S. doth assume to me, that if the Defendant doth not pay it, he will; this consideration is good, and not against Law, albeit it be at the Kings Suit, Croo. 1. last publisht. 910.

If one at the Request of I. S. promise to beat I. B. and I. B. doth promise to save him harmless; this is a void Consideration. But if one request I. S. to enter into the Pannox of Dale, and give

out Cattel, and he will save him harmless that doth so, and after Trespas is brought, and recovery had for it; he shall have his Action upon this promise. So if a Sheriff pretending to have a Writ, but he hath none, Arrest one, and Request an Inn-keeper to entertain him in his House, or hire one to conduct the Prisoner to Gaol; and promise to save him harmless; this is a good promise, and if either of them be sued for it, he may have his Remedy upon the promise. So if a Sheriff hath Arrested one upon a Commission of Rebellion from the Council of the North, and he prays an Inn-keeper to keep him a night as a Prisoner, and he will save him harmless, and the Inn-keeper is sued for it; he may have Remedy upon this promise, *Huttons Rep. 55.*

If two Percers agree, A. and B. that A. shall lay down his Trade, and use it no more, and for this B. shall pay him Ten pound; this Contract it seems is naught.

If one seized of Land in Fee, bind himself in a Recognisance to me, and then enfeoffee J. S. of the Land, and J. S. in consideration that I will assign to him my Recognisance, assume to pay such a sum of Money by a Day; this is not against Law to assign it to the Terre-tenant, as it is to assign it to a stranger. *Croo. 1. last published 551.*

If one retain me to be his Solicitor for the prosecuting and defending of his Law-causes, and promisseth to give me so much, &c. this is not unlawful, but a good consideration, upon which I may have this Action, *Adjudged twice. Croo. 1. last published 760.*

If one be a Suitor to my Daughter, and I offer Four-score pound, and he will not have her under
Four-

Fourscore and ten pound, and my Daughter before the Marriage, in consideration that I will give the Fourscore and ten pound, promise me to pay me the Ten pound within a moneth after Request; this is not a good consideration, but made deceitfully, and therefore unlawful, Croo. 1. last published 774.

If one part of a Consideration, upon which a thing is to be done, be against Law, and so void, yet if another part of it be good and lawful, the consideration is good to ground the Assumpsit upon it, for it may be divided, and if any part of it be good, it is sufficient to make the promise good, Mich. 23. Car. 1. B. R. Siles Registr. 31. Coe. 12. 102. Dyer 359. Churches case, Pasche 7 Jac. B. R. Popham 32.

If I sell one my Goods, on condition he shall not sell them again; this is void, Coe. upon Lit. 223. But if the Contract be executed, that I have delivered the Goods, and have my Money, perhaps the condition only is void, and the Contract good.

If I sell my Horse first to one, on condition that he pay me five pound such a Day, and before the day I sell him to another; this second Contract seems to be void, albeit I be not paid my five pound, and that I seize him again, and therefore the first Contract is good. And a man may not sell that which is none of his own, Plow. 432. Coe. upon Lit. 309. Perki. sect. 15.

If I, being an Executor, have a Judgement in an Action upon the Case in an Assumpsit, and a friend of mine, in consideration that the Sheriff will execute the Writ, and that for his peace given unto him by the Sheriff, promise the Sheriff

Threescore pound, this was adjudged to be unlawful, and that the six pence given did not make his promise good, Croo. 2. 103.

That if the Sheriff of his County at my Suit, and I tell him such will do execution, he will save him harmless.

If the Sheriff have a Fieri Facias against one Goods are the Defendants Goods, and shew him where they are, and promise the Sheriff, that if he make Execution of them, that I will give Bond to the Sheriff, when he shall require it, of any reasonable sum, to save him and all others harmless for meddling with them; this Contract is certain enough, and lawful, and he need not shew the tender of the Bond, or by whom the Request is made, Croo. 2. 652.

Promise of Money for an escape.

If one, that is no party to the Suit, say to the Sheriff, that hath taken one upon a cap. ad satisfac. let him go at large and I will pay you what damages you shall sustain thereby; no Action will lie upon this, for it is against Law. Herleys Rep. 175. So if I promise any one that hath such a Prisoner, money to let him go, Bulstr. 2. 23. 213.

If one promise me a Hundred pound to sollicite his business, no Action will lie for this, Owens Rep. 123. 124.

Consideration about a thing impossible.

Part 29.

If I in consideration that another will go to Rome in three dayes, promise one Ten pound, or have given one Ten pound, and for this he promiseth to go to Rome in three dayes: Or in consideration that he shall enfeoffe a Corporation of such a name, and there is none such: Or if it be to enfeoffe a mans Wife, or if it be to do a thing that afterwards becomes impossible; these, it seems are void Contracts; and if Money be paid, by any thing given for it, he may happily recover the thing again. See for this. Coe. 1. 84. upon Lit. 207.

If

If the consideration of a promise be Executory, as in consideration, that you will serve me a Year, I will give you Ten pound, here the Action may not be brought, till the service be performed. But if it be a promise on either side Executory, it needs not have a performance, for it is the counter promise, and not the performance that makes the consideration, yet it is a promise before, though not binding, Hobb. pl. 128.

Consideration Executory, Executed and pursued or not.

If one in consideration, that I will give my consent, that my Father shall make an assurance to him of his Land, promise to give me Ten pound, this is good; And in this case, it seems, if I give my assent, although no assurance be made, yet I may recover the Ten pound. And especially, where by the agreement, I promise to give my consent. But if I had not given my consent, I could have had nothing; Fuller's case Godb. Rep. 28. 29. Eliz. Co. B. pl. 106. And if the assurance be made to him and his Wife, or to another to his use, it will be a question if it be good; because he doth not pursue the agreement.

Promise of Money, to give an assent to a thing.

Mutual promises.

If the consideration of a promise be Executory, it must be duely and fully executed and performed before the Action can be brought. And therefore, if one promise to me Ten pound, to help to gather his Withe, Hay and Cozn; and I help him to gather his Cozn onely, and not his Hay also, I cannot recover the Ten pound in this suit. Mich. 7. Jac. B. R. 9. H. 7. 43. Survey of the Law, 89. 91. But if he have no Withe-hay to gather, it is good enough.

The Count, Pasche. 14. Jac. B. R. Fuller's case was this. That the Plaintiff declared, that A. was indebted to him Two and thirty pound, for which

Mutual promises.

he

he sued A. And that it was agreed between him and A. to stay the Suit, and if he paid it not before Michaelmas, he should give security, &c. In this case it was held, that he need not shew that he did surcease his Suit, for it is a Reciprocal agreement. But if A. in consideration, that the Plaintiff shall surcease his Suit, promise to pay it, then he must shew that he did surcease, Pasch, 14. Jac. B. R. Fuller's case.

Promise
to pay
Money, he
hath re-
ceived for
me.

Counr.

If one in consideration of divers sums of money, he hath received of divers persons to my use, amounting to Four and twenty pound, assume to pay this to me; this is good, and I may have this Action for it. And I need not in my declaration, shew of whom he received the Money, Trin. 14. Eliz. B. R. Beckingam and Lamberr.

Promise
on Condi-
tion.

If I promise and assign my interest in a Lease, to another, on condition that he will get the consent of the Lessor, and that he will pay me so much, as I. S. shall Arbitrate, the consent must be had, and the Debt Arbitrated, before any Action may be brought on the promise, 14. H. 8. 20. Browal. 1.

Reciprocal promi-
ses.

Part 30.

If one promise me Twenty pound by Bill, and I promise to deliver him the Bill, and he promise to bring two sufficient Sureties, and with them to give Bond for the Money by a Day; this is a good promise on both sides, on which, either of them may sue when they will, Mich, 38. 39. Eliz. Gowers case, Adjudged.

Condition-
al promi-
se.

If one sell me a Horse for Ten pound, on condition that I pay him this Ten pound in Corn; in this case I must pay him in Corn, or he may have this Action for his remedy, Fitz. Det. 68.

Release to
or Sealed
to one, &
he sealed
it to ano-
ther.

If one promise to me, in consideration, that I will seal a Release to I. S. he will pay me Ten pound,

pound, and after, at his request I seal the Release to I. D. and not to I. S. in this case I cannot bring the Action for the Money, because I have not pursued the Consideration, Trin. 4. Jac. B. R. Cranfield and Green. Croo. 1. 3.

If one promise to me Ten pound, when I have Promise done such a work; this is a good Contract, and of pay for when I have done the work, I may sue for it, Plow. work. 5. 44. Ed. 3. 22.

If an agreement be made between I. S. and my self thus. That if he shall deliver me Twenty pounds worth of Cloths, or assure me such a piece of Land, that I shall pay him Twenty pound; this is a good Contract, and after the performance of the condition, and not before, he may have his Action upon it. As where I promise to make new Pales, it I may have the old Pales; I must have the old, ere I am bound to make new; and I am not bound to look after the old Pales my self, 33. H. 6. 43. 27 H. 8. 44. Perk. Sect. 7. 13.

If one promise to me to build a House, or do any such like thing, and this done, I promise to pay him Ten pound for it; the thing must be done before he can sue for the Money. Promise of Money for building of a House.

If one promise me three shillings a Week for his Dyet and Lodging; and I find him Dyet, but not Lodging, in this case I may not sue for the Three shillings a week upon this Contract, but so much as I deserve for the Dyet and Lodging, 9 Ed. 4. 1. Croo. 2.

And therefore where the Plaintiff I. S. emisset equum, at such a price, and the Defendant ad tunc & ibidem ratione premissarum, did assume to pay the Money; this was adjudged to be naught, for the sale did preceed the Consideration, Pasche 9 Jac. Farmer s

Farmers case, B. R. And where the Plaintiff declared, quod cum the Defendant was indebted to the Plaintiff Twenty pound for Meat, Drink and Lodging for himself, and two others, that he did such a day assume to pay it to him; that this was not good, Curia. Scedmans case.

Promise to make a Release, it must be a good Release. Pleading.

If it be a part of a Consideration to make a Release, it seems it must be shewed to be a good Release, and therefore safest to bring it, and shew it to the Court to be judged upon, if it be good, or not, Croo. 1. 13.

Promise for Money, to get a new Lease of Land.

If a Father promise Money, if the party to whom he promiseth ad instantiam, &c. shall marry his Daughter; it need not be shewed that it was at his instance, but it shall be presumed, Croo. 1. 141.

If one have a Lease for Years of Land, the Reversion in B. and in Consideration of Ten pound paid by A. to him, and of Ten pound to be paid to him upon the procuring of a new Lease to him, he doth promise to surrender his Lease, and procure him a new Lease before the end of Trinity Term; this is good in the Consideration and promise, and the last Money not to be paid till he procure the new Lease. Croo. 1. last publishr. 249.

Promise of Money for service.

If one promise me, that if I will serve him for a year, and manure his Land, &c. he will pay me Forty shillings, this is good; and if I serve him the time, I may sue for the Money, but if I depart within the time, I have lost the Money, Croo. 1. last publishr. 250.

Promise to pay another's Debt upon abatement.

If A. be indebted to me a Hundred pound, and B. in Consideration that I will abate Ten pound, and forbear the Fourscore and ten pound till Michaelmas next, assume to pay me the Fourscore and ten pound, if he do not pay me; in this case, If I shall

shall Release or discharge that Ten pound, and say
bear to sue for the other till Michaelmas, I may
have this Action. But if I sue for the Fourscore
and ten pound before, otherwise, Croo. 1. last pub-
lish. 477.

If I, in Consideration that a Lease for years of
Land, shall at my request surrender all his interest
to me, and will be contented that I shall have it to
use at my will, assume to pay him Threescore and
ten pound, when I shall be thereunto required; this
is good, and actionable, when a good surrender is
made, and an Actual Request performed, and not
before, Croo. 1. part last publish. 487, 488.

Promise
of Money
upon a
surrender
made.

If one in Consideration that I will relinquish
such a Suit, promise to discharge me of all the
Suits of I. S. and I do relinquish; yet this is no
good Consideration; for I may relinquish it to day,
and begin it to morrow again, Croo. 1. last publish.
361.

Promise
upon a re-
linquish-
ing of a
Suit, to
discharge
other
Suits.

If one, in Consideration that I have promised
to pay him such a sum of Money such a day, and
place, promise upon payment thereof, to surrender
a Lease unto me, that he hath of my Land; this
is a good promise, and Action will lye upon it. But
I must be sure to tender the Money, and say in my
Declaration, that I have paid it, or tendered it, and
it was refused. But if the promise be, that in
Consideration that I have assumed to pay such a
sum, that he hath assumed to surrender; in this
case he is to surrender, and rest upon my promise
for the money, Croo. 1. last publish. 889.

Promise
upon pay-
ment of
Money to
surrender
a Lease.
Mutual
promises.

If A. B. sell to C. D. 43 Loads of Timber, to
be carried from B. in D. in the County of Essex to
Lime-house in London, and in Consideration that
I will go with him to the said C. D. and help him
fur-

Promise
of Money
for work
to be
done.

further in the selling of Sixteen Loads of Timber, and procure Rafter to be laid upon Hay, and get others to assist him in laying the said Hay and Timber, and would carry the same Timber to the same place in Limehouse, for Eighteen pence a Load, he doth assume, &c. this promise is good enough, but because I can sue upon it, I must shew, that all this, which was futurely to be performed, is executed and done, Croo. 2. 583.

If an Executors Testator were indebted to me Three and thirty pound, and in Consideration that I will forbear to sue the Defendant, till he hath got Execution upon such a Judgement, he doth promise to pay my Three and thirty pound upon request; this is a good promise, on which I may have Action, Croo. 2. 593.

If one promise to me, in Consideration that I will make him a Lease (and say not what Lease) of such Land, that he will pay me Ten pound; this Consideration is void, and therefore the promise naught; for it may be a Lease at will, and then he may avoid it as soon as it is made. So if I promise to one, in Consideration he will forbear his Suit against me, and say not how long, these are frivolous, and naked promises, ex quo non oritur Actio. So if one promise to relinquish his Suit; for he may begin it again after he hath relinquished it, Pasche 39. Eliz. Burkins case adjudged, Co. B.

If one sue for Twenty pound for Peat, Drink and Lodging for himself, and two others, that he, in Consideration he was indebted Twenty pound to the Plaintiff, so assumed to pay it; It is said, this is not set forth certainly enough. Steedmans case. Curia. And yet where A. sued B. and declar-

ed

red that B. was indebted to him Ten pound for
Wheat, Agistments, and Wares had of the Plain-
tiff, and in Consideration thereof, did assume to pay
the same to the Plaintiff: this was adjudged cer-
tain enough, and good. And yet this would not be
good in an Action of Debt upon the very Contract,
Hobb. Rep. pl. 8. For is it sufficient to set forth
in this Action; That where the Defendant was in-
debted to the Plaintiff Ten pound, that he pro-
mised to pay it to him; for perhaps it was for a
Rent on a Lease by Debt, or a Debt by Obligation,
in which cases this Action will not lye, unless it be
upon the Consideration of the forbearance of it,
Adjudged, See Hobb. Rep. pl. 365. Buller. 1. part
153.

Debt:

promise
of a Debt
before
due.

If one promise to me, that in Consideration that
I will forbear him a Debt he hath owe me, for a
little time [or for a short time [or for a conveni-
ent time] that he will pay it; these Considerati-
ons, and so the promises grounded upon them, are
void for uncertainty, Croo. 1. last publish. 759.
So where the agreement is aliquo tempore [for
sometime, Buller. 1. part 92. 14 H. 8. 18, 19, 20.
Yet see the case in Croo. 1. 173. 316.]

Paululum
temporis.

If I sell my Horse for Ten pound, to be paid in
a short time; this bargain is void for uncertainty: 17.
And therefore if the other that buys, take or leave
the Horse with the Seller; it seems he may take
and keep, or sell his Horse to another at any time;
till he have received the Ten pound, Buller. 1. part
92. 14 H. 8. 18, 19, 20.

Uncertain.

If I retain a Carrier to carry my goods, or a
Tailor to make my Cloths, or a Smith to shoe my
Horse, and say, that I will content him; this
Contract is good and certain enough, Croo. 2. part

Taylor.
Carrier.
Smith.
Solicitor.

263. And this Action will lie for it. So for a Solicitor that hath laid out money, Croo. 1. 76.

Forbearance.

Uncertainty.

If one, in Consideration that I will not sue one I. S. for Twenty pound he oweth me, assume to pay it before Michaelmas next; this is not good, and the forbearance afterwards for a reasonable time, will not make the promise good, Croo. 1. last published.

455

Contract Frivolous and Idle.

Wager.

Agreement to pay Money in a short time, is incertain, and no good Agreement, Croo. 2. 250 683.

If two lay money on a Wager, and put it into a third mans hands, he that wins will have it, and he that loseth will have no remedy, Agreed at S. rum Affizes, 9. ar. 1. And if it be about a Horse-race, and be clearly made, it may be good and binding. But the Law doth not favour such vain sports, nor the Contracts that are made about them. By Baron Thorpe at Glouc. Affizes. 1654.

Divers Considerations, some good.

Forbearance.

And yet where divers considerations be alledged by the Plaintiff, and some of them are frivolous, and void; yet if any of them be good, the Plaintiff shall recover, Adjudged. Croo. 1. last published. 149.

If I have a Judgement against an Administrator for the Intestates Debt, and he promise me, in Consideration that I will forbear to sue Execution against him, untill Oct. b. Mich. that he will pay unto me the sum recovered at Mich. this is a good Consideration, and if he pay me not at Mich. I may sue before Octab. Mich. Croo. 1. last published.

758. 759.

Wager.

There was a wager laid between A. B. concerning the quantity of yards of Velvet in a Cloak, and each of them delivered into the hands of C. Ten Angels, and each of them agreed, that if there were Ten yards of Velvet in the Cloak, that then they

they should be delivered to B. and if not, to A. this is good; and may be pursued accordingly, 1 Cro. 1. last publish. 870.

If I. S. and my self be talking of the buying of two of his fat Oxen, and I promise to pay for them seventeen pound in a Month time; and he doth thereupon assume to deliver them unto me; this promise to pay intra breve tempus, is uncertain; and no Consideration at all; and therefore not good to ground an Action upon it, Cro. 2. 230.

If one owe me Two hundred pound for a Debt, given to my Wife, and if I will forbear it, he doth promise me to pay me according to the rate of Ten pound by the hundred; this promise seems to be somewhat uncertain; and that it is not good, Cro. 2. 603.

If I Arrest B. for a Debt due to me, and Call sume to me, that if I will not prosecute this Suit, that he at such a day after will pay me the Debt; this is good, Judged, Affirmed in Error, Cro. 2. 397.

If one Covenant, in Consideration of a Marriage Portion, to assure Land of Four thousand pound a Year, unless Reprisal in England, such as Sir R. Crew, and Sir H. Yelverton shall advise; this promise is good and binding. But if he have cause to shew how he did perform it, he must set forth the particulars, Bendloes 127.

If one, in Consideration of Ten shillings by me given to him, promise to pay me Ten pound, if he do not prove that I had a Child by such a Woman; this Contract may be good enough; and the proof may be in the Action brought upon the Assumpsit. And it seems, it may be done at any time during his life, Bendloes 139. 10 Ed. 4.

Contract
of debt
of debt
of debt
Promise
incertain.

Consideration
to
forbear, &
say not
how long.

Consideration
not
to prosecute
cure, how
taken.

Part 32
Promise
for Money
to sure
Land.

Wager.

Promise
for a Re-
lease to
pay Mo-
ney.
Not pur-
sued.

If one promise to me, that if I will seal a Release to I. S. he will pay me Five pound; this is good. But if I aver, that I, by the appointment of him, delivered the Release to B. to the use of I. S. this is not well pursued and performed. But otherwise, if it had been by the appointment of I. S. himself, Noys Rep. 18. 8 H. 7. 13. 2.

Promise
for defer-
ring the
Suit to
pay Mo-

If one owe me Money upon an Obligation, and I being in talk to sue him, he, in Consideration that I will defer the payment of the Money, and not sue him upon that Obligation, doth promise to pay me; this was adjudged a good Consideration, and the deferring of the Suit in such a case shall be intended for all the life time of the Obligor, and that if he sue, the other may have an Action of the case against him for it: But if the Consideration were to forbear paululum temporis, this were not good, Noys Rep. 83.

How to be
taken.

Pleading
Aver-
ment.

If one, in Consideration that I will make him a Lease of certain Land at such a Rent, assume and promise to give me a Horse; this is good: But if I sue for the Horse, I must shew that I have made such a Lease, without reservation of such a Rent; this will not warrant the Action. So if one say to another, make me a Lease for One and twenty years, and I will give you a Horse, and he make me a Lease for Threescore years; this is not sufficient, albeit it be better, because he hath not precisely pursued the Agreement. So if one say, go and do such a business at York, and I will give you Forty Shillings, and he afterwards hearing that he dwelt some few miles on this side York, saith to him, Do this business for me at your house, and this shall suffice; yet this notwithstanding, if he go not to York, and doth this work there, he can never

Conside-
ration
pursued.

never have the Forty Shillings, Bullr. 3. 222. 35.

If the Conſideration be to lend me Ten pound for a year, to lend ſome of it for a year; and ſome of it for leſs than a year, will not be a performance. And if the Conſideration be to pay one Ten pound in Gold, and he pay it in Silver; this is not ſufficient, Yelverton's Rep. 87.

If an Assumpſit be grounded on two Conſiderations, one that may, and another that may not be performed; if that which may be performed be done, it is good enough: And where the Action is grounded upon that which is, and that which is not performed, it will fail. As where one, for five Shillings paid, and five Shillings to be paid at a day to come, both aſſume to do a thing, it muſt be averred to be done; for if the firſt five Shillings be not paid in hand, or the other were not paid at the day, no Action will lye upon it: If the one five Shillings be not paid, or it be not averred, that the other five Shillings was paid at the day, the Plaintiff hath failed of his Assumpſit in the one caſe, and the Declaration is inſufficient in the other, for he hath made a departure from the Conſideration, Popham.

Conſiderations how to be taken.

32.

SECT. 7.

3. For the Manner and matter of the Promise, Covenant, and Assumpſit. And what ſhall be ſaid a good Promise, Covenant, or Promise as to this, to ground this Action upon, or not.

As touching this point, it is to be known,

1. As to the Manner of the words of a Contract, or Promise: That it matters not in what ſort of

1 For the
Manner of
the pro-
mise or
Assump-
sit and the
words
thereof.

Part 1.

2 For the
Matter of
the pro-
mise or
Assump-
sit

Words the Assumpsit is made, so the sense be certain and clear. And therefore if one promise me Twenty pound to do a work, or when I have done a work, or if I do a work, or so as I do a work; all these are good Assumpsit. So if one promise me Twenty pound to marry his Daughter, or if I marry his Daughter, or with the Marriage of his Daughter; these are good Contracts and Assumpsit. So if one shall say to me, if you will satisfie me, I will do such a work, Plow. 5. 305. Nor is the party that is to sue upon a Contract, to declare in the very words of the Contract, but to take up the substance, and sense thereof, and the same to put into a formal way of pleading. See after part 4, and 5. of this Section.

As to the Matter of the Contract, or promise it self, this is to be known. That to make it such as upon which this Action may be raised, it must have these things in it.

1. The thing promised or undertaken must be lawful.

2. It must be possible to be done.

3. It must be clear and certain.

4. It must be cohering, and agreeing in it self, and with the Consideration.

5. And it must be serious and weighty. And therefore let a promise, or undertaking be made amongst persons never so well qualified, and upon never so good a Consideration; if the thing promised be either malum in se; or malum prohibitum; or if it be altogether incertain and doubtful what it is; or if it be impossible to be done; or if the thing to be done be a frivolous and vain thing, no Action will be upon it. As may appear in the following cases.

If the thing promised to be done by the one party in lieu of a good Consideration by the other party, be either *malum in se*; As to kill a man, or to commit any other Felony, or to beat a man, or to burn a mans House, or to forswear a mans self, or the like; or *malum prohibitum*, as to be a Forged Seller, Regrator, Ingrosser, Paineiner of Suits, or to erect a Cottage against the Statute, or the like; Or if the promise be that a man that hath the Fee-simple of his Land, shall not alien this Fee-simple Land; or being Tenant in tail, that he shall not suffer a Recovery of his entailed Land; or if the promise be, to save or keep a man harmless, whatsoever he shall do; or that a man shall not use the thing he hath bought, or take the profit of his Land, or the like; or if it be, that a man being an Officer, *pro bono publico*, shall not execute his Office; or that he shall do against the duty of his Office, as being a Sheriff, or Gaoler, that he shall suffer his Prisoner to escape; or if it be, that a Husband-man shall not sow his arable Land at all; or that a Tradesman, or workman shall not use his Trade at all, or for a time, or the like; this Contract is naught, and the promise will not bind nor bear Action. And if he hath paid Money, or delivered any thing in lieu of it, he may perhaps have it again: So where there is an Usurious, or Symoniacal Contract in the case, or it tends to maintain a Monopoly, and the like. And so generally (whatsoever for the matter of it) in the Consideration will make the Assumpsit void, the same in the promise will make it void. See for this before. Sect. 6. part 27. 28.

For Contracts in Deeds solemnly sealed and delivered, such as *see* Feoffments, Leases, Obligations,

ons, and the like, that have such matter in them are void, for these causes. And yet it is said in *March Rep. pl. 238.* by a Judge, that it was adjudged, that although Bonds, &c. of this nature are void, yet Assumpsits are not so; as an Assumpsit not to use ones Trade, &c. But Quare for the Law seems one in both cases, especially if it be a total Restraint. And see for all this, *Coo. 10. 101. and 11. 53. super Lit. 206. Dyer 304. Plow. 64. Fitz. Obligation. 13. Coo. on Lit. 206. 207, 219, 223, 224, 207. Perk. sect. 723. 727. Dyer 252. 347, 356. 17 Ed. 4. 4. 9 H. 7. 21. 10 H. 7. 6.*

But if the thing undertaken and promised to be, or not to be done be in its own nature good, or indifferent, and not malum in se, or malum prohibitum; As if it be to pay Money,

To forbear a Debt, or a Suit for it, *Croo. 2. 47.*

To become Surety for another, *Croo. 2. 18.*

To enter into a Judgement, Statute, or Obligation, *Croo. 2. 652.*

To purchase Land for another, and to give it him:

To pay a Rent, or Annuity, *Pasche 9 Jac. B. R. Collins case, Croo. 2. 598.*

To acknowledge satisfaction on a Judgement, *Trin. 38. Eliz. B. R.*

To deliver up a Statute, or Obligation.

To go such a Voyage, *Croo. 1. 179.*

That an Attorney may gather and retain my Rents for his Fees; or another for a Debt I owe him, *M. 9 Jac. B. R.*

To heal a disease in man or beast.

Not to molest one in a Suit.

To save one harmless for any undertaking or Action that is lawful, *M. 9 Jac. B. R.*

To

- To make some estate of Land, or grant a Rent.
- To surrender Land, Croo. 1. last publisht. 188.
- Not to sell Goods or Land to such a one, &c.
- To plow Land.
- Not to revoke a Letter of Attorneys.
- That a man shall enjoy Land, Trin. 38. Eliz.
- B. R.
- To seal a Deed.
- To build a new, or to amend an old house.
- To plant Trees.
- Not to meddle with an Executorship.
- To keep Goods safe.
- To deliver, or not to deliver goods, Old B. of Entries. 4. Bendl. 151. Croo. 2. 503.
- To make a Portion sure.
- To give Wedding Apparel.
- To marry with another, Croo. 1. 175. 1. last publisht. 61. Hobb. pl. 179.
- To make a Release of Title of Land, or other thing.
- To discharge any Engagements.
- To defend a Title of Land.
- To perform Covenants.
- To stand to an Award. To pay Money, or to have an Award, Croo. 3. 78.
- To perform a Will. To pay a Legacy.
- Not to oppose the probate of a Will.
- To give Land or Goods by his Will.
- To appear in a Court.
- Not to be Surety for another.
- Not to play at Cards or Dice.
- That goods shall come safe to Dale. Croo. 3. 78.
- To make satisfaction for a wrong done.
- To keep a Prisoner safe, Winch. Rep. 48.
- To buy Wares of him, Croo. 2. 396.

All these, and such like things as these undertaken, are good and lawful. And so generally, whatsoever (for the matter of it) may be lawful and good, in the Consideration of a promise; this also will be good and lawful in the promise it self. And if there be a good Consideration to induce it, will give this Action, See more for these things. Plow. 308. Kelw. 69. 77. Finches Law. 49. 14 H. 6. 13. 3 H. 6. 13. 21 H. 7. 41. F. N. B. 145. 19 H. 6. 49. 2 H. 6. 55. Lib. Intr. 3, 4. 13. Bulstr. 1. 38. 3 H. 6. pl. 33.

About
Usury, or
an Usuri-
ous Con-
tract.

Part 2.

If the Agreement be personal, and parol onely, and there be an Usurious Contract included in it, it is void, and this Action will not lye upon it. But for the opening of so much of this as is needful to our purpose, here take these things.

1. That then it is an Usurious and unlawful Contract, where more is taken or agreed to be taken, directly or indirectly for the loan of any Money, Wares, Merchandizes, or other Commodities whatsoever, than what is appointed by the Statute, Plow. 282. As If I owe one a Hundred pound more to forbear it for six moneths; it is naught, Trin. 20. Jac. B. R.

2. That this may be by Fines, Feoffments, and other kinds of Assurances by Deeds whereof we shall say nothing in this place.

3. The punishment of it is, that he that takes it, both lose threë times as much as he takes; and the Contract made about it (of what nature soever it be) is void, See the Statutes of Usury. Co. 3. part of his Institutes. chap. 70.

4. Where the Original Contract is Usurious, all the assurances that depend upon it are void. But if he take not what is agreed upon, he shall not pay the

the treble value of it; Pasche. 7. Jac. B. R. Corfield's case.

5. The taking of something in the by, as a pawn for security, will not make the Contract unlawful, Trin. 13. Car. 1. B. R.

6. Nothing that is given to a Broker in the by, will make the Contract usurious and unlawful. By Just. Bridgman. Hill. 7 Car. 1.

7. Regularly there can be no usurious Contract, where the principal is lost, except by notorious Circumstances there be an apparent corrupt bargain, Corfield's case, Pasche 7 Jac. B. R. Brownl. 1. part. 108.

8. If the Original Contract be not usurious, no matter ex post facto will make it so. And therefore to take his use before the end of the year, where the Original Contract is not usurious, will not make the Contract void, Thurslies case. Hill. 7 Jac. Co. B. Brownl. 1. part 73. 191. Bu R. 1. part 17.

9. Where upon the first Contract the Lender is not sure of any benefit, but he doth secondarily hope for some at the will of the Borrower onely; this is not an usurious Contract, Coe. 5. 69.

10. A woman that hath a husband, or a man and his wife, and a third person, cannot make an usurious Contract within the Statutes, Trin. 13 Car. 1. B. R.

11. No stranger, not party to the first Contract, may be punished for it, Brownl. 1 part 85.

12. If the bargain be directly so made, that the party may either take or refuse it, it is not an usurious Contract, Stiles Regist. 74.

13. If a Contract be made so, that revera it is usurious; and yet made so, that the Statute may be

be avoided, it is usurious, and within the Statute, Stat. Regist. 75.

14. Where a man runs a hazard to lose all, there the Contract is not corrupt; and therefore if one deliver to another, going with a Ship to fish in New-found-land, which Voyage may be in eight Moneths, fifty pound, to pay Threescore pound upon his return of the Ship to Dartmouth; and if it do not return, then to pay the principal money only; and if the Ship never return, that he shall pay nothing; this is not an usurious Contract, Croo. 2. part 109.

15. If one lend Thirty pound for half a year, to receive Three and thirty pound, if the Son of the Obligor be alive if not seven and twenty pound; this is not usurious, Croo. 5. 70.

16. If one owe me a Hundred pound, and he and I agree to give Thirty pound for the loan of it a year; and that he and I shall be bound to another for this Thirty pound, and I being indebted to one a Hundred pound, and the Debtor of my Hundred pound, and I, are bound for this Hundred pound to discharge his Debt, he not knowing anything of this corrupt Contract; this will not hurt the Contract made by us, so as to make the Bond we have made void, Croo. 2. 32. 33.

17. If one borrow a Hundred pound, after the Rate of the Statute, and the borrower do after pay part of the principal, and all the use within the year, and the lender receive, or sue for it within the year; this is no usury for no matter ex post facto, after the first Contract can make it so, Hill. 7 Jac. B. R.

18. If the Contract be, that the borrower shall give such a sum for the loan, as comes to the Interest

rest only; but he is to receive this Money for the loan within Ten dayes next following; this is a corrupt Contract, Bulstr. Rep. 1. 20.

19. If one borrow of me Six pound by a day, and if he pay it not by that day, that he shall pay me Twelve pound; this is no usurious Contract, Thurslies case. Broo. Oblig. 79.

20. It is not an unlawful usury upon a loan of Money for a year, to agree and take his interest quarterly, or half-yearly, so much as it comes to for the time. But to take the use at the beginning, or before the time, for more time than is past, is corrupt, Croo. 2. part 16.

21. Where there is not an usurious Contract precedent, although the lender do take more than is appointed, upon a just computing of the Money received by him, whether it fall out by the mis-casting of the party, or by the mistake of the Scrivener; this is not within the Statute, Mich. 23 Car. 1. Stiles Regist. 341.

22. The case in effect was, A. was in Debt to me a Hundred pound, and he doth promise to me, that if I will forbear him half a year, that he will pay me my Money and interest for it, being then 150 pound, and I sued for it in this Action upon the Assumpsit; and it was held by Justice Dodridge, and Justice Haughton, that the Contract was void, for Usury is against the Common Law, Trin. 20 Jac. Sande. for a case. See Cog. 10. 102. Dyer 376.

If there be a Symony in a Contract: As if one for Ten pound given by A. to him, or promised to be paid to him, promise to present A. to his Church being void, Brownh. 2. part 162. And if another besides A. himself give the Money to the Patron, or agree to give the Money, and hereupon the Pa-

tron

tron promise to present, especially if A. be prior to the Contract. So if A. (the Church being void) Contracts Symonically with the Patron, to have the Presentation, and upon this corrupt Agreement he doth present R. a man ignorant of the Agreement; yet this is a corrupt Contract, and void. For if any Patron shall receive, or take any Money, Fee, Reward, or other profit, for a Presentation to a Benefice with Cure; and in truth, he that is presented, knoweth nothing of it, ~~per~~ the Presentation, Institution, and Induction void. But if the Presented know nothing of the corruption, then is he not within the Clause of a disability mentioned in the Statute by all the Judges. Mich. 8 Jac. Co. on Li. 120. B. owl. Rep. 2. part 164. Co. 12. 101. And yet to sell, or buy for ones self, or another, the next Avoidance of such a living for Money, or other reward; it seems this is not Symony. Mich. 8 Jac. B. R. But see W. nche mbs case. 14. Jac. Co. B. The case was A. a Clerk, when the Church was full, agreed with the Patron to give him Ninety eight pound, when the Church should become void, the then Incumbent, being a very old sickly man, and agreed, that the Patron should grant the Avoidance to a friend of the Clerks, who did present him; this was held a Symonical Contract. Br. wolg. 1. part 71. ~~Do~~ a Contract was made by one with the Patrons Brother (the Church being then full) that if he could procure three Grants of the next Avoidance to be surrendred, and get him to be presented when it became void, that he would make him a Lease of Parcel of the Tithes of the Rectory, and he did during the life of the Incumbent, get the grants to be surrendred, and all the rest is as done; and it was

was agreed to be sold, See more, Croo. 1. part 44. 241. 207. Bullr. 2. part 182. La. et Rep. 7172. 100. See Croo. 1. 203. 240. 257. That a Contractation to have Money, to procure one to be Rector of a Church is a Symoniacal Contract, and unlawful Act, and that it is not so spiritual a thing, but that the Common Law takes notice of it. But in that case the Declaration was naught, for the promise is to pay him after he is Rector, and he shews that he was Rector by his procurement upon this promise, which cannot be, for coming in by Symony, he is utterly disabled, &c. And the same was adjudged to be an Error, and the Judgment Reversed.

All Contracts made by any Curate, or any Ecclesiastical living, with cure, or any part thereof, for any longer time then whiles the Rector shall be ordinarily resident, and serving the Cure of such Benefice, without absence above thirty dayes in one year, are void, Stat. 13 Elz. ch. p. 20. 14 Eliz. chap. 11.

About Leases, made by Ecclesiastical Persons.

If any Contract be made, that shall include with in it a Monopoly. As where a Contract is made between one of a Trade that is useful to the Common wealth, and some other, to restrain him from the free use of his Trade (which is intended to make him idle) to the end, to bring the Trade into few, or into one mans hands; this is void, Croo. 1. 24. H. 5. As if one for a good Consideration, promise not to use his Trade; But so promise not to use is for a certain time, or in a certain place, as in such a Town, this some say is good, Bullr. 2. 136. And yet some hold that Parol Contracts of this nature are good; But that Bonds in Writing, sealed and delivered are void, others hold the contrary, See March. Rep. 77. pl. 121. and Croo. 2. 596.

About Monopoly.

Not to use a mans Trade.

whers

where it is adjudged, and resolved, that if a Mercer keep a shop in one Town, and his shop is furnished with old sullied wares, and he contract with another Mercer, that if he will buy of him all his wares in his shop, and give him for them what they cost him, that he will no longer keep a Mercers shop in that place: that this is a good Assumpsit. It is useful in London to let a mans shop, and wares to his Apprentice out of his time, and to agree with him, not to Trade in such a shop, or street. And if one for Ten Shillings promise to pay an Hundred pound, if he henceforward keep any Drapers shop, in New-market, this is good, Pasche, 18. Jac. Bragg. and Tanns.

If one assume that if he use his Trade, he shall pay an Hundred pound. But if it be onely, that for good Consideration he doth assume, that if he use it in Newgate-market, he shall pay him an Hundred pound: this may be good, Bendish. 89. 90. A. and B. agree, that A. shall sell to B. all his Mercery wares, and take his shop of him: in Consideration whereof, A. promiseth, that he will not set up his Trade in that Town: this is good, Adjudged. March. Rep. 77. Stiles Rep. 214. 215 See Noys Rep.

28. March. Rep. 12.

If one in Consideration of so much money, paid by me to him, assume, that he will not exercise the Trade of a Innkeeper in a shop, parcel of a House so him demised, for the Term of One and twenty years: this is good, Adjudged. Bolstr. 2. 136.

If A. be sued on a Bond, and I become Bail for him, and Judgement and Execution is had against me: And the Plaintiff doth promise me, so as I will pay him, he will assign me the Bond and the Debt, and make me a Letter of Attorney, to sue for

Champer-
ty.

it

it in my own name, this promise is against Law, and void, being Champerty, T. 10. 38. Eliz. B. R. Dixons case.

A Contract, that a Husband-man shall not plow his Errable Land, is a Contract of this nature, and void. So if one be engaged by any such promise, not to appear upon any Jury, or not to serve in any Jury; this were unlawful and void, let the Consideration be what it will, B. n. l. R. p. 89. 90.

If the Sheriff promise the Prisoner he hath in his Custody, for Ten pound that he shall escape, this promise is void, and no Action will lye upon it. Co. 10. 76. 102. Dyer. 356.

A promise made to an Attorney of the Common Bench, to pay him for suffering a Cause in Chancery, is good, Said to be adjudged. March Rep. 78.

If I promise for Ten pound given to me, to beat a man, this promise is unlawful, and void, Cro. 1. 257.

If I Arrest a man, to the end he should engage himself to me, for Ransome, where none is due, and he being in prison, doth so, so that the promise is made by Duress of Imprisonment; this is void, But an Engagement by a Prisoner for a due Debt to obtain his liberty, is good, P. 1. 9 Jac. B. R. But if one threaten to kill, beat, wound, or imprison me, unless I will make him such a promise, and thereupon, and for this cause only I do it, let the promise be made to him that doth threaten me, or to another, it is void, and the Action brought upon it may be avoided for this. But for this, see Bro. 76. 18. 9 H. 7. 24. 39. H. 6. 5. Brownl. 2. part 2. 76. But the threatening of me to kill, beat, wound, or imprison my Father, Mother, Child,

Not to plow his Land.

To make escape.

To beat a man.

By Duress of Imprisonment.

Part 2. 76.

Brother, Sister, or Friend; or the threatening of me to burn my House, enter upon my Land, or take away my Goods, will not make such a Contract void, 15. H. 6. 17. 11 Ed. 4. 13. 8 H. 6. 8. Co. 2. 9. 21 Ed. 4. 13. 18 H. 6. 21. 7 Ed. 4. 21, 20 Ass. pl. 14.

Executi-
on.

If one promise to me an Officer, more than my due Fees to do my duty, which is Extortion; this promise is not good to bind me, H. 11. 22. Jac.

Mainte-
nance,
Embrace-
ry, &c.

If any Contract be made for the unlawful buying of pretended Titles, Maintenance, Embaycery, or the like, for the raising, or continuance of unlawful Suits, or the like; these also will be void, and no Action shall be maintained upon them, 7 Ed. 3. 9. Fitz. Champertie. 6. But to promise an Attorney Money for following of my cause, or any thing for a lawful maintenance is good, and will bind, Dyer. 356. Hobb. Rep. pl. 72. Croo. 1. part 113.

How an
Assumpsit
shall be
taken.

If a Contract be, that I shall stand to the award of I. S. so that it be made before the Tenth of May next, provided that I have notice Fifteen dayes before, and the Contract is made the Ninth of May; this is void. So if I for Ten pound paid, or promised, agree, and assume to go to Rome within three dayes. So if for such a cause, I assume to make an Estate in Dale, of White-acre, worth Ten pound a year, where ever it is worth but five pound a year; or that I will be Non-Suit in such an Action, and there is no such Action in being; or that I will assure such a piece of ground, where none such is, Perk. s. Ct. 735. Co. upon Lit. 207.

Insensible
promise
gone.

If the Contract be, that where A. hath a Judgement against B. for Twenty pound, and A. hath acknowledged satisfaction, that B. shall before such a day get a Warrant from A. whereby A. may be sa-

labeled harmless from the same acknowledgement,
Hil. 17 Jac. B. R.

If one for good Consideration, promise to appear
the next Term in such a Court, and die before
the day, it is now at an end. So if one promise,
that A. B. shall marry me by such a day, and be-
fore the day he marry me himself, 21 Ed. 4. 53.

If one for good cause promise, that a man in
London should cover a House in Hampshire, Bend-
loes. Rep. 139.

That a promise to one, in Consideration he will
be my Solicitor in several Suits I have depending
against me, that I will give him as much for his
pains as he shall deserve; it seems this is not good. Maintenance.]
And that an Attorney or Counsellor, who hath a
profession towards the Law, may sollicite any Suit
in any Court, and is is not maintenance. But o-
therwise it is of any other person; Her eys Rep.
129.

If A. be Indebted to B. Thirty pound, and B.
hath sued him, and hath a cap. utlegat. against him
directed to the Sheriff, and one I. S. and my self be-
ing talking about it, he doth promise me, that if I
will go to the Sheriff, and procure a special War-
rant, and Arrest A. that he will give me Forty Shil-
lings; it seems this is void by Stat. 43 H. 6. Ad-
judged, for the Defendant, Noys Rep. 76. Extortion

But if one Warrant for Ten pound, that a Boat
shall come safe upon the Thames, unto such a place;
this it seems is good, and an Action may lie upon it,
34 H. 6. Brod. Action upon the case. 107. That a
Boat shall
come safe
to D.

If a Clergy-man pay the Bishop part of his
first fruits, and promise him the rest by a day, but
doth it not; it is said, the Bishop can have no Ac-
tion upon this promise at Common Law. And yet
About a
thing.
merely
spiritual.

if he have any special temporal damage by it, it seems there is as much reason an Action should lye for this, as for calling one Adulterer, Bastard, or the like, *Coo. on L. r. 162. B. Coo. 4. 16. 17. Croo. 2. 473. 163.*

About a thing In-
certain,
Insensible,
Doubtful,
or Repug-
nant.

Part 5.

Certainty.

How it
shall be
taken.

Election.

If A. Contract with B. that A. shall keep B. without damage against I. S. for Ten pound, in which B. is bound to A. this is a void contract for Incertainty: So if a Contract be between A. and B. that A. shall pay his part of the sums of Money that shall be levied for the trying of the Customs of M. So if one promise to another, to save him harmless, and say not for what, or against whom; these Contracts are insensible, and incertain, and therefore void: But if any sense, or certainty can be made of them, they shall be good, and an Action may lye upon them, *Pasche 9 Jac. B. R. Coo. 10. 102. 76. Dyer 356.* And therefore if the promise be to make good a House; this is certain enough, and shall be taken, that he shall repair it, *Mich. 21 Jac. B. R. Key's case.* So if one owe me money, and another upon some good Consideration annexed to the promise, doth promise to make it good to me; this is certain enough, and shall be taken in the vulgar sense, *Mich. 21 Jac. B. R.*

If one promise me for good Consideration, to pay me Ten pound, or give me a Cowe such a day; this promise is certain enough and good. And if one of them be not done at the day, this Action lyes: And before the day, he that is to do it, hath his choice to do which of them he will: But after the day, he to whom it is to be done, hath election, which he will take, *Fitz. Debt. 89. 9 Ed. 4. 39.*

So if one promise me, that for Ten pound paid, he shall give me a Horse, or a Watch such a day; this

this is certain, and good enough, Fitz. Debt. 89. So if the Agreement be about Twenty Shillings for a Horse in hand, and Ten pound more to be paid at the death or marriage of the buyer, for which he shall become bound by Writing Obligatory with Surety, that for this the Seller will deliver the Horse upon request; this also is certain enough, and good, Hobb. Rep. pl. 79.

Certainty.

If a Contract be between A. and B. that A. shall do such a Work, and B. shall pay so much for it, but that A. shall not sue for the Money, this is repugnant and void, and will not bind on either side, till the work be done; and then perhaps he that did it, may have an Action for his wages, 7 H. 6. 44. 21 H. 7. 24. 30.

Repug-

nant.

Certainty.

If one in Consideration that I have given and delivered to him a Horse, and I have promised to him, that upon Twenty pound paid to me, I will deliver him such an Indenture, and he assents to pay me this Twenty pound at Michaelmas; this is a good Contract, Croo. 5. 37.

Certainty.

If one promise to give so much for a thing as it shall be reasonably worth; this is void for Incertainty, Dyer 91.

Certainty.

If one, for good cause, promise to pay me money in a short time; this is void for incertainty. So if one sell me a Horse for as much as I shall value him at, Bulstr. 1. part 92. Croo. 250. 683. So if one for good cause, promise to forbear me his money for a little time; this is void for Incertainty, Palshe 8 Jac. B. R. Sackfords case.

Incertain-

ty.

If one promise me, that if I will deliver wares to his Daughter, that he will pay for them; and it shall be intended that he will pay me for them, Noys Rep. 83.

Uncertainty. If one say to another, I pray trust I. S. with a Hundred pound, without more words; this is no good Assumpſit, unless he and these words, and I will see you paid, or some such like words, Yelvert. n. 45.

Uncertainty. If a promise be to pay so much Money for Currence sold unto him, discomputando, for four moneths; it seems, this Declaration is uncertain, and so void, Stiles Rep. 29. Broer and Sothwell. Trin. 23 Eliz. Stiles Rep. 27. 58. 63.

Certainty. If one promise, in Consideration of a Marriage, to leave half his Estate to the party; this is certain enough, and good, Stiles Rep. 463.

For an insensible Contract, See more Bendloes, 150.

About Marriage. If I promise to another, so he marry my Daughter, to give him as much as I shall give with any other Child; this is certain enough, and good, and if I by my will shall after give a Hundred pound to another Child, he that marries my Daughter, may sue my Executor for this Hundred pound, Glouc. Affizes. 6 Car. 1. Whitlocks case. Trin. 17 Jac. B. R. Rolls case. So a promise to give a Childs part is certain enough, and good, Trin. 17 Jac. B. R.

Frivolous promise for Uncertainty. If I promise to one, in Consideration that he will pay me Ten pound, I will make him a Lease of such Land; this it seems is little worth, but void, for uncertainty; for he may make a Lease at Will, and avoid it as soon as it is made: So if the promise be to forbear a Suit, and say not how long, Pasche. 39 Eliz. Co. B. Bu:kins case.

Frivolous Part 6. If a Contract be so, that part of it is, that the Contract shall be of no use: As that one of the parties shall bring no Action upon it, or shall have no

no benefit by it; this is frivolous and void. 7 H. 6.
44. 21 H. 7. 24. 30.

If one agree with me, that he shall not beat me,
it seems this is void.

If one give me twelve pence, and I, in consi- Promise
deration hereof, promise him, that if I do not cause to pay five
him to be whipt to morrow about the Crosse in Glouc. pound, if
I will give him five pound, and he is not whipt; he cause
no Action will lie for this five pound, upon this fri- nor the o-
volous promise. Hetley Rep. 4. ther to be
whipt.

If an Agreement be to make a Lease of Land, Incertain-
and it is not said when to begin or end; this is also ry.
gether incertain and void; for it may be a Lease at
will, which may end as soon as it doth begin, Bar-
kin's Case. M. 38, 39. Eliz. Co. B.

If two lay Money on a Wager, and put it into Wager.
a third mans hands, he that wins will have it, and
the loser hath no remedy for it, to get his Money
again. By the Judges at Sarum Assises, 1 Car. 1.

If a promise be to pay Money, and no time set About
for the payment thereof; this is certain enough, payment
and good, and shall be paid presently: So if a pro- of money.
mise be to make a Lease for certain years of Land, Lease for
and say not when it shall begin; it shall begin pre- years.
sently. Coq. 10. 76, 102.

If one promise me all that he can recover in such Certainty.
a Suit, or all that he can get upon a Composition
on such a Bond; these Promises are certain enough,
and therefore good. Trin. 19 Jac. B. R. Morris's
Case. So if one promise to content me for my
work when it is done; this is good enough. Mich.
17 Jac. B. R. Griffin's Case. So if one promise to
give me a Child's part, or as much as with any
other Child; if there be a good Consideration an-
nexed to such a promise, the promise may be good.

Id certum est, quod certum reddi potest. Trin. 19
Jac. B. R. Morris's Case. Mich. 17. Jac. B. R. Griffin's
Case. Trin. 17 Jac. B. R. Bolle's Case.

Certainty. If one promise to me all that he can recover in
in such a Suit, or upon a Composition of such a
Bond; this is certain enough, and good. Trin. 19
Jac. B. R. Morris Case.

Certainty. If one promise to content me for my work; this
is certain enough, and a good Promise; or in re-
spect of my labour in another Realm for him, to
pay me my contentment for it. Godb. Rep. pl. 31
Eliz. Mich. 17 Jac. B. R. Griffin's Case. Godb.
pl. 179.

But hereupon all these kinds of unlawful, im-
possible, insensible, uncertain, doubtful, repug-
nant, and frivolous Contracts; these questions
may be made.

1. Whether, if one of the Parties have parted
from any Money, in consideration of the thing to
be done; or upon the Promise, if he may have his
Money again; and how?

2. If the Contract be naught, for any of these
Causes, if this will make the whole Contract void,
or not: And whether it may not be good on the
one side, albeit it be naught on the other side: As
where Reciprocal Promises be, and one of them
is lawful, possible, &c. And the other is not so;
if this will make both the Promises void.

3. If one give another ten pound to do a thing
at that time lawful, possible, &c. but it doth after
become impossible, unlawful, &c. if the Money
be lost or not? As where Money is given by me to
another, on Condition he shall stand to an Award,
if it be made before Easter next, or appear such a
time in a Court, and he die before the time,

4. What

4. What Relief may be had in these Cases; and if none be in Law, whether a man be not relievable in Equity.

See for these things, Cro. upon Lit. 205. 219. 223. 227. Perk. Sect. 722, 723. 727. Croo. 1. 24. 6. 43. Dyer 343. Co. 11. 53. Dyer 252. 262. Plow. 272. 286.

The Cases that follow are of better Contracts and Assumpsits.

If I sue another, and being ready for Trial, he in consideration I will surcease my Suit, doth assume to Assign me such a Lease, and pay my costs; this is good; and if I stay my Suit, I may sue for it; but I must be sure to say how much my costs are, or my Declaration will not be good, and he may demurre it. Croo. 1. last publish'd. 276.

If one, in consideration that I will at his request deliver as many quarters of Wheat to J.S. to his use, as he shall receive, and have before such a day, that he will pay me such Sums of Money before such a day; this is good, and he shall pay as much as the same is worth. Croo. 1. last publish'd. 149.

One declared in an Assumpsit, That in consideration he had sold and delivered a thousand Couples of New-land Fish, ad usum proprium of the Defendant, and in consideration that he had shipt the said Fish and agreed to transport them from Bristow, to St. Lucas in Spain, and to retransport from thence the value of the Fish to London at Bristow, secundum usum Mercatorium, the Defendant promised to pay to him a hundred and twenty pound upon the arriving of them in Portie St. Lucas. And shews, that all this was done, &c. And after many Objections to the form of the Declaration, it was adjudged for the Plaintiff. Croo. 1. last publish'd. 229.

To pay money in forbearance of a Suit.

To pay Money for Mault. Part 7.

To pay Money upon the transporting of fish.

Pleading.

If

To pay
money for
horse-
meat to
an Hostler.
Request.

If one leave his Horse with me an Hostler, for six pence day and night, agreed upon till it come to twenty pound; I may recover it in this Action, and say, licet sapius requisit, without shewing any special Request, and recover it all in one Action. Yelverton 67.

To pay
money for
Corn.
Debt.

If I have a Lease for years of a Close, and Corn growing in it, and one, in consideration that I at his request have bargained, and sold him the Corn upon the same Close. assume to pay me sixteen pound at such a day to come; this Action will lie for this sixteen pound, as well as Debt. Co. 4. 94.

To pay
Rent
whilst he
enjoys the
Land.
For Rent.

A. in consideration that B. will suffer him to enjoy White-Acre, promiseth to pay him three and fifty shillings a year Rent, so long as he enjoyeth it; this is good. Stiles Rep. 463.

This Action will not lie for Rent upon a promise in Law, but it will lie upon a special promise of the Party. Stiles Rep. 463.

About a
Lease for
years, or
Land.

If one for Money sell me Land, and promise to make me an Estate of it, or to give me the possession of it, and do not; I may have this Action for my damage, and am not bound to sue for the Land in Chancery. 3 H. 7. 14. 14 H. 8. 15. 21 H. 7. 41. 2 H. 7. 11. 20 H. 7. 9. 22 H. 6. 44. Regist. 112. B. Bulstr. 1. part 112.

To pay
money it
he may
enjoy the
Land.
To enjoy
Land quietly.

If one for good cause promiseth to convey Land to such a one as J. S. shall name; this is good, and he that promiseth must so convey it. Mich. 13 Jac. Co. B. Hulligo and Wild.

If a Lessor for good consideration doth promise me his Lessee, that I shall quietly and peaceably enjoy his Land, during the Term, without the let of any person whatsoever, and by one wish, or without title I am expelled, I may have this Action. Dyer 328.

One

One Ganible brought an Action against Terrel,, and declared, that where he made a Lease to the Plaintiff for Years, rending thirty pound Rent; and that the Defendant, in consideration that the Plaintiff would pay the Rent, that the Plaintiff should quietly hold and enjoy his Estate, without interruption, and set forth, he was ousted, and did not say by Title, &c. and yet it was adjudged for the Plaintiff. Mich. 7 Jac. B. R.

If I being Lessee for years, let a house at will, To save
and the Tenant, in consideration that I will suffer harmless.
him to enjoy it till such a day, doth promise to keep
me harmless, and indemnified, by reason of his
in-dwelling therein, and occupation of it; and for
every farthings hurt may pay me two pence upon
request, this is a good promise. Mich. 9 Jac. B. R.
Coventry and Woody.

If one promise, for good cause, to purchase Land To pur-
for me, and doth it not, I may have this Action: chase
and it will not excuse him, if he do not his indea- Land for
bour, albeit the owner will not sell it. 16 H. 6. another.
Case 44. 11 H. 6. 18. 3 H. 7. 14.

If I give one ten pound for his promise, to get Breach of
a Lease for me, and he gets it for himself. 3 H. 7. Trost, De-
14. See more of this, chap. 7. ceit.

If I make a Lease for years to another, and he Debt.
for this, promise to pay me a Sum of Money in To pay
grosse, and do not, I may have this Action; if it Money for
be for Rent; I may have Debt for this. Lit. Broo. a Lease.
Sect. 45. Fitz. Debt. 129.

If I Sell my Land for twenty pound to be paid
me on a day certain, and it be not paid me on the
day, I may have this Action for it, albeit the Land
be not assured, for he may compel me in Equity to
assure it. 3 H. 7. 14 2 H. 7. 12.

To enjoy
Land till
he be paid
his Debt.

If one lend me Money, and thereupon I enclose him of Land, and by agreement he is to have the profits of it till I pay him the Money; this is good, and it seems, as long as he hath the profits of the Land, he may not Sue for the Money. Fitz. Det. 100.

About
Wood
and Trees.

If one Sell me six hundred Coards of Wood, to be taken by his Assignment, and after he Sell four hundred Coards in the same place to M. to be taken where he will, after he assigns and sets out the six hundred Coards to me, and I cut them down, and M. takes them away under colour of his Contract; I may have this Action against him. Co. 5. 24.

If a Tenant in Fee-simple, or Fee-tail, Sell me the Trees upon his Land for Money, and this be by word only; it is a good Contract, and I may cut and take them away at any time (in the Case of the Tenant in Fee-simple) during his life, or after his death: And (in the Case of the Tenant in Tail) at any time during his life. Co. 11. 50. Perk. Sect. 58.

Contract
about
Timber-
Trees.
Part 8.

Timber-trees may be contracted for, whilst standing, as well as Goods or Cattle, and a Contract by word of mouth for them may be good, as for Goods and Cattle.

If I bargain and sell my Land, and the Trees upon it, and the Deed is not well executed, so as the Land doth not pass, in this Case the Sale of the Trees is not good: And yet if Tenant in Fee-simple for good Consideration sell his Trees on his Land alone; the selling is good, and the Buyer may cut and take them away, either in the life-time of the Seller, or after his death: But if he be Tenant in Tail of the Land, the Buyer must cut

cut and carry them away, in the life-time of the Seller, for he may take them after his death. Co. 11. 48. 58. Perk. Sect. 50.

If one promise me, that if I will lend him ten pounds, and accept a Bond of A. B. of fourscore pound, and a Letter of Attorney to sue it, and will promise to release to him all Actions and Demands, that if A. B. pay me not in such a time, that he will pay me the fourscore pound; this is a good promise, and Action will lie upon it. Cro. 2. 623.

To pay Money upon a loan of Money, and a Release made.

If one promise to pay Money, or do any thing on such a day next coming, or about that time, it seems it is good, it must be done near about the time. Noy. 16.

If a promise to pay Money be part of the Contract, this may be good, albeit no time be set when it shall be paid, for then it is due presently. Hobb. Rep. pl. 7.

About payment of Money and no time set.

If my Debtor, who hath Statutes from other Men, deliver them to me towards my satisfaction, and die; and one that is neither his Executor, nor Administrator, request me to deliver him the Statutes, and he will pay me my Debt; this is a good Consideration and Promise. Hobb. Rep. pl. 7.

To pay Money upon the delivery of Statutes

One Declares of a Promise made to a feme dum sola fuit, That whereas there was a Communication between John Brown, Father of the Plaintiff, and Rob. Brown the Defendant, Cousin of the said Robert, and the Woman, when she was sole, of a Marriage to be had between Robert Brown and her, and John Brown promised to her that if the Marriage take effect, he would assure to them such Land, &c. And the Defendant did then promise to her, that if John Brown did not perform his promise, that the Defendant would give her a hundred

To pay Money on a Marriage.

Hundred pound, and that the marriage took effect, and the Land not assured, &c. And it was adjudged a good promise, Croo. 1. last publisht. 63.

On a marriage.

If one promise to me a Woman, that if I marry his Wilsman, and out-live him, that he will pay me Twenty pound, and I do marry and out-live him; I may have this Action, Hobb. Rep. pl. 179.

Debt.

If one in Consideration of Marriage, doth promise to me Twenty pound, viz. Ten pound at Michaelmas, 1631. and Ten pound at Michaelmas, 1632. this is good; and the Action will lye for non-payment the first day. But Debt will not lye till both the dayes be past, Croo. 1. 175.

On a marriage.

Husband and Wife, may sue.

If my Wife give one Ten pound, upon an agreement of Marriage of my Daughter, and he promise to repay it, if he do not marry her, and he doth not marry her; in this case, I and my Wife may sue for this Ten pound, and recover it. Albeit, I did never otherwise agree to it, then by bringing of the Action, Croo. 1. last publisht 61.

To pay Money upon forbearance.

If one A. owe me Twenty pound, and one B. owe to C. Twenty pound, and C. in Consideration that I will forbear my Twenty pound, and compound with B. for his Twenty pound and the interest, promise to pay the Twenty pound, and Twenty pound and interest; that shall be due; this is a good promise and Consideration, Croo. 1. 198.

If I be indebted to I. S. Forty shillings, and give it to A. B. to pay him, and he in Consideration thereof, doth assume to pay it, and discharge me against him; this is a good promise, Croo. 1. last publ. 98.

Part 9.

If one in Consideration that he shall occupy and enjoy such Lands from such a day, for five years, promise to pay me Twenty pound for every year,

at

at two feasts; this is a good Assumpsit, and for non-payment, every year I may have this Action. But if the promise be, that he shall enjoy the Land for five years, and in Consideration thereof, that he shall pay me an hundred pound in five years, viz. Twenty pound per annum, there no Action will lie for part, till all the years be expired, Croo. 1. part last published 118.

So if one for Money agreed upon, promise to pay so much as shall be due to the Mayor of London for his Graunge, from an Alien; this is good, Dyer 352.

Assumpsit upon an Indebitatus, brought by A. against B. quod cum B. was indebted to A. fifteen pound, B. assumes to A. that if A. will forbear to sue B. untill the first day of Easter Term next, which was a moneth after, that B. would pay the same sum to him, the Plaintiff counts, that he had forbore accordingly to sue, and B. had not paid, &c. And it was adjudged, that Indebitatus Assumpsit generally, for Twenty pound, to pay the said Twenty pound, will not maintain an Assumpsit, without some Consideration shewer. And that an Assumpsit, where the Plaintiff hath an Obligation for it, or a Judgement, or a Recognisance, or for Rent reserved on a Lease for years; in these cases it will not lie. But in the principal case, the Indebitatus is but the inducement to the forbearance, and here is a promise of forbearance Judged good; affirmed in Error; and the Judges ex officio, will take notice of, Easter Term, Croo. 2. 549. Jenk. Centry 8. 71.

The Count was, that upon an Infimus computasset, the Defendant was indebted to him, Twenty pound, and promised to pay it, &c. In this case

Crook

Promise of Money for Graunge to the Mayor of London. Indebitatus Assumpsit.

Forbearance.

Assumpsit for a Debt on a Judgement, Bond, or Record.

Certainty

Infimus Computasset.

Conside-
ration,
Implicit
Assumpfit.

Crook Justice saide, it was a good Consideration, and Dodridge. That in every Action of Debt, an Action of the case is implied. And when it appears how the Debt grew due, then it is a good Assumpfit. Trin. 14. Jac. B. R. Cullimore and Eynison. Survey of the Law. 94. and in Croo. 2. 602. The Count was, whereas they infimul computaverunt, concerning the Arrearages of such a Rent, issuing out of the Defendants Land, and about payment of a Legacy of Fifty pound, due to the Plaintiff by his fathers devise, and it was found, that three hundred pound was due to him, And the Defendant in Consideration hereof, promised to pay it such a day; this is a good Consideration and promise, on which I may have Action, Croo. 2. 602.

Officer
promise
to do his
Office.

Promise
to pay, for
Soliciting
Suits.

Fees of
Officers.

If I retain one as of my Counsel, or as an Attorney, and he doth promise me to follow my Suit, and doth it not, or doth it not faithfully and diligently, I may have this Action, albeit I give him nothing for it, for he is bound ex officio to do it, albeit he doth not promise it. As if a Serjeant or Councello, promise to plead for me in my Suit, and plead amiss. Or an Officer in a Court promise to do any thing belonging to his Office; as a Clerk to Inroll a Jury, or the like, and he doth it not; the party hurt hereby, may have this Action, 14 H. 6. 18. But see for this at large in chap. 10.

To pay
Money for
an Estate
of Land.

Count.

If one declare that I. S. being seised of Land, made a Lease of it to me for years, by vertue whereof, I entred, and was possessed; and that the Defendant promised to me, if I would seal and deliver to him a Deed of assignment of my Lease and Interest in the Land, he would pay me an Hundred pound, and that I did seal and deliver a grant; this is a good promise, and the Declaration good, albeit

I do not say I was possessed; and albeit I do not alledge I did grant my Lease and Interest, but that I sealed and delivered a Deed of grant, Croo. 1. last published 50.

If I let a man a Stock of Cattel, for four years, to pay me Ten pound a year for Rent; this is a good Contract, but I cannot bring an Action of Debt for the Rent, till the four years be expired, but I may have an Action of the Case for every Rent if not paid, as the dayes of payment come, Coe. 2. 22. Dyer. 113.

Money to be paid at divers days.

If one for good Consideration, sell me Land for Money, and promise to make me an assurance of it, or put me in possession of it by a day, and do not, I may have this Action. Old book of Entries, fol. 5. and recover damages; or if I will I may have this, and compell him to make an assurance of the Land in Chancery, by three Justices, Pasche. 9. Jac. B. R. Jolleys case.

To make me an assurance of Land.

Equity.

Equity.

If one promise me, that upon payment of such a sum of money to him, he will convey such Land to me; and I pay the money, and he refuse to do it; I may have this Action, Bulstr. 1 part 89. Noys Rep. 88.

If one sell his Land to me for Twenty pound I have paid to him, and now he refuseth to make my estate, I may have this Action. And if one sell me Land for Money, and promise to make me an assurance of it, or to put me in possession of it upon request by a day, and do not, I may have this Action, Old Book of Entries fol. 5. and recover damages, or if I will I may have this remedy, and compell him to make my assurance in Chancery by three Judges, Pasche. 9. Jac. B. R. Jolley's case, see 21 H. 7. 41. Action, &c. 45.

To assure
a Copy-
hold up-
on pay-
ment of a
Debt.

A. is indebted to B. and A. saith to C. if you will pay this Debt to B. for me, I will assure you such a Copyhold for One and twenty years, as I. S. shall advise; and he adviseth that A. shall seal a Letter of Attorney to two Tenants to surrender, and he shall give an Obligation for quiet enjoying, &c. this, if he do not, is Actionable; Croo. 2. part 104.

About a
marriage.
Executor.
Part 10.

This Action will lye for a Marriage portion upon an Assumpsit, and that against an Executor; albeit it be a spiritual Contract. Upon this difference, if one doth promise to give another so much, if he doth marry such a one, or if he doth marry his Daughter; for this he may sue at common Law, and his Executors shall be lyable for this after his death; otherwise it is, where he assumes to give so much with his Daughter in marriage; this Suit (it is said) must be in the spiritual Court, and the Executor shall not be charged there in this case, Bulstr. 3. 235.

Marriage.

If I promise one, so he marry my Daughter, to give him as much as I shall give with any other Child; this is good, and if after upon my Will, I shall give a Hundred pound to another Child, he may upon this promise recover of my Executors a Hundred pound, so agreed by the Judges at Glouc. Assizes. 6. Car. 1. in Whitlocks case.

Marriage.]

If A. promise B. a Woman, that if she marry his kinsman, and out-live him, that he will pay her Twenty pound; this is a good promise, and if she out-live him, and the Money be not paid, she may have Action upon it, Hobb. Rep. pl. 179.

Marriage.

If one promise me, so I will marry I. S. and assure her such Lands for her Joynture, that he will pay me a Hundred pound, and make sure her portion
Six

Six hundred pound; this is a good promise, and shall be taken as a warranty of the portion, Croo.

1. 146. 147.

If I th^e Consideration that one will marry my Marriage.
Daughter, promise to pay him Three hundred pound, scilicet, Fifty pound by the year, during Six years; this is good, and at the end of every year, this Action will lye for Fifty pound, Adjudged. Sir Tho. Jofeline's case, Croo. 1. last published, 118.

If one desire leave of me for his Son to be a Incertain-
Sutor to my Daughter, speaking with me about ry.
her, and I give out speeches in general, or say to Marriage.
the Father, that I will give her a Hundred pound to him that shall marry her with my consent, no Action will lye upon these words for this Bond; 2 Jac. B. R. Noys Rep. 11.

If one promise to give me as much at his death, Marriage;
as he gave to any of his Children, and that I shall have a Child's part; this is a good promise; or agreement for a Marriage; the promise of Child's part is incertain, but as much as he hath given to any Child; or to any Child but his eldest Son, is certain and good, Popham 148.

If I at the request of I. C. let my House to A. B. Promise
for a year at such a Rent, and I. C. promise me, that to pay the
if he do not pay my Rent, that he himself will pay Rent a-
it; this is good, Croo. 2. 684. greed up-
on.

If my Servant be in Prison, and I request his Assumpfit
Enlargement of A. and promise to save him harm- to save
less, and he fail in it; I may have this Action: harmless.
But I must request it of him, and set it forth in my Request.
Declaration, that I did request it, Dyer 272. But
if one become my Bail for my Servant, and after
I promise to save him harmless; no Action will
lye for this.

Request.

Count.

A. doth promise to B. to discharge him, and save him harmless from all Bonds in which he shall be bound for the Son of A. at the request of the Son; B. sued, and shewed that he as fidei Jussor was bound for the Son, &c. in this case it was held a good Consideration, but that he ought to have shewed precisely, the request of the Son, and that to say as fidei Jussor is not sufficient, Pasche 9 Jac. B. R. Sommersons case. Lib. Infra 11 C. sect. 1.

If one in Consideration that I will be bound for him, doth promise to save me harmless, this is a good Assumpsit; and if I be any way troubled, I may sue him upon it in this Action. So for any thing else that I shall do at his request, Pasche 19 Jac. B. R. Boyton and Vaughan. Old B. of Entries. fol. 11.

If one be in my House, and desire me to suffer him to dwell there till such a time, and in Consideration thereof, doth promise to save me harmless; and for every farthing I shall be damaged in the interim, by reason of his possession, to pay him two pence; this is good, and hath in it a double promise: And if he sue upon the last part, two pence for every farthing, he must shew how many farthings in certain he hath been damaged, Bulfir. 1. part 38.

[Count.

If one indebted to I. S. Twenty pound, in Consideration that I will at his request give my Bond to I. S. for it, he assumes to save me harmless; this is a good Assumpsit, Croo. 1. last publisht. 97.

If one pray me to be Bail for another in the Kings Bench, and promise to save me harmless, and I do thereupon become his Bail, and any damage come to me by it, I may have this Action for my remedy, Croo. 1. part last publisht 458. part 5. But he shall recover no more in damages, than he is like

like to sustain by it: And therefore if there be an Error in the principal Suit, by which it is like to become fruitless to the Plaintiff, therein he shall recover damages accordingly, Croo. Idem.

If A. be Bail for B. in B. R. and B. promise to save him harmless, no Action will lye for this by A. against B. although he pay the Money, if no Capias be awarded against the principal, nor Scire facias against the Bail, Trin. 7 Jac. B. R. Rolls and Jones Error upon a Judgement, in Co. B.

If I be an Inn-keeper, and one bring a Prisoner to me, and requests me to keep him a day and night, and promise to save me harmless, and perhaps he is falsely imprisoned, and I sued for false imprisonment of him; I may be relieved upon this promise, be his imprisonment lawful, or not, I am not to take notice of that. As where I bid a man go into anothers ground, and in my name to drive out the Beasts and impound them, and promise to save him harmless: But yet if the Act in it self appear to be unlawful; as where I request you to beat another, and promise to save you harmless, it is otherwise, Winch. 48. 49.

Unlawful promise.

If one promise to me, in Consideration that I have paid to him Forty pound for the Debt of A. my Son, that he will deliver to me all the Wills and Obligations, in which A. was bound to him; I may have Action upon this: But therein it seems must lay a request and denial to deliver them. And I shall not need to aver in my Count, that there were Wills or Bonds, Croo. 1. last publisht. 133.

To deliver Writings, or Bonds, or Goods. Count.

If one in Consideration that I have paid him Forty pound for the Debt of A. my Son, assume to deliver me all the Wills and Obligations, in which my Son was bound to him; this is a good Assumpsit Croo. 1. last publisht. 133. D 3 If

Averment

Part 10.

If one deliver me goods, and Ten shillings, and for this I promise to keep them safe; this is a good promise, Croo. sect. 82.

Request. If one promise to deliver a Deed upon request, and this is upon good Consideration; this is a good promise; but the request must be shewed in the
Count. Count; but if it be of a thing due before or upon
Traverse. sale, the request may be shewed; but it is not necessary; and therefore in this case it is not traversable, as it is in the first case, Pasche 28 Eliz. Co. B.

Promise for work done.

If one for good Consideration agree with me to build, or to cover my House, or to set up a Mill, or to plow my Land, or to cut Trees, and carry them to my House, Regist. 109. B. Or to plant Thorns for me, Lib. Intr. 13. sect. 1 or the like, and he doth it not; I may have this Action against him for his not Feasance, 14 H. 6. 18. Action, &c. 8. 14 H. 6. 18. 3 H. 6. 36. M. 2 H. 4. 3. Action 23. 20. 3 H. 7. 14. So if a Smith undertake to shoe my Horse, and doth it not, 14 H. 6. 18.

To pay for work done.

If one retain me to go a Journey, and promise me as much as will content me for it; this is a good promise to ground an Action, when I have done the work, and shewed him what will content me, and demand it, &c. Croo. 1. last publisht. 132. 133.

How it shall be taken. To stop Cert.

A. doth Contract with B. and assume to him, to deliver a Hundred quarters of Barley a Ship board in such a Port, viz. at Barton Haven in Com. Ebor. and mention no time to be carried there, &c. A. assumes to carry them, and to be at this Port with them, B. agrees to pay so much for the said quarters of Barley; A. doth arrive with his Boat there; this is a good Contract: But in this case A. is bound to seek B. at the said Haven, and to deliver to him the said Hundred quarters as aforesaid, A. doth

it not, albeit B. hath performed his promise, and was ready there to receive it, B. brings this Action, it lyeth well, Judged. Affirmed in Error. Mich. 13 Jac. Atkinson and Buckle, Jenk. Cent. 8. case 39.

If one promise to me, in Consideration that I will do such a work, he will give me as much as I shall deserve for it; this is good, Bendl. 139. Wages for Shork.

An Attorney may have this Action for his due Fees against his Client, that hath retained him without any promise made to him to pay it, Croo. 1. part 76. 140. An Attorney for his Fees.

If one in Consideration that I will be his Servant, and follow his Suits, promise me as much as I shall deserve; this is a good promise, Hetleys. Rep. 129. Servant for wages.

If it be agreed between me and another, that he shall have leave to depasture Twenty Sheep from Michaelmas to the second of April, upon my Land in Dale, and in Consideration of this, shall pay me as much for the same, as it shall be worth, Bendl. 147. Quantum meruit. To pay money for feeding of Sheep.

If one promise me, that if I will procure a Licence for B. from one C. my Lessor to sell a Team that he hath, that he will pay for my charges as much as I shall deserve; this is a good Assumpsit, and Consideration, though there be no need of a Licence; and I may have this Action upon it, if I procure the Licence, for the procurement of it, though vain, is a labour to me, Judged. Affirmed in Error. Croo. 2. 618. Jenk. Century 8. Case 18. Bendl. 139. Quantum meruit. Certainty.

A promise to pay Money in Trinity Term, is certain enough and good, Leonards Rep. pl. 295. Certainty.

If the Father being sick, having two Sons, is making his Will, his two Sons present, and is a-

To pay
Money, for
his Land,
be not
charged.

about to give a Rent out of his Land, the elder Son offered the Father and Brother, that if the Father would forbear to charge the Land with the Rent, that he would give the Brother so much, and thereupon did not charge the Land; this was adjudged a good Consideration and Promise. Leonards Rep. pl. 275.

Promise
to fat my
Hogs, and
re-deliver
them.

If I put my Hogs to another to fattening at Mast, and he promise me, in Consideration I will give him Three shillings Four pence for the fattening of every Hog, that they shall be delivered to me well fatted, &c. this is a good Promise. Leonards Rep. pl. 261.

Pleading.
Consideration.

If a Promise be laid to pay Money owing for Goods, in Consideration of the Goods delivered; this is no good Consideration, otherwise it is if it be for Goods sold. Leonards Rep. pl. 222.

Wages for
work.
Part 11.

If I agree with one to carry Goods for me, and no Wages promised for it, and he is no Common Carrier; that no Action will lye against him, if he do it not, or do it amiss. 3 H. 6. 36. 2 H. 7. 11.

Taylor.

If one retain me, being a Taylor, to make Cloths for him, and bring me the Cloth, or put me to Buy the Cloth, and I make his Garment, I may have this, or an Action of Debt at my choice for the Money. Croo. 2. 626.

Debt.

Infant.

And if he bring me Cloth to make him a Suit of Cloths, and promise me as much as I shall deserve for the making of it, and for the Necessaries thereof &c. this is good. Noys Rep. 85. And if it be for an Infant, it is good, for making and petty Necessaries, as Linings, Thread, &c. Noys Rep. 15.

Carrier.

If a common Carrier by Boat undertake for good Consideration to carry me from Bristol to London Two Buts of Muskevel, and was so careless

less of them, that one of them did run out. Noys
Rep. 114.

An Assumpsit is, that if A. a Chirurgion do Cure Physician.
B. of such a disease, he shall have Ten pound, and
if he do not Cure him, that then for his pains and
endeavour he shall have five pound; this is a good
Promise, that will yield an Action. Godb. Rep.
pl. 490.

If one Contract with me for good Cause, to do
work for me, and he doth it not; or he Contract
with me to do it in such a manner, and he doth it
after another manner, I may have this Action.
14 H. 6. 18. 3 H. 6. 36. N. B. 145. G. 2 H. 4. 9.
21 H. 7. 41. 20 H. 6. 35. See more in chap. 12.

If I being a Solicitor retained for J. S. do retain
an Attorney for him to sue, and I do assume to
pay him his Fees; in this Case he may have this
Action, or Debt against me for his Fees at his
choice. Adjudged. Hill. 16. Jac. Bradford's Case.
17 Ed. 4. 5. 33 H. 6. 8. But if I retain an At-
torney for J. S. and say no more; in this Case it
seems he can have neither of these Actions against
me: And yet if I say to him, Be Attorney for J. S.
and if he pay you not, I will; in this Case he
may have this Action. And if I say, Be his At-
torney, and I will pay; by this I am chargeable in
both these Actions. 43 Eliz. Simpsons Case. Bulstr.
1. part 16.

If a Common Carrier from Briskow to Glou- Carrier,
cester by Boat, to whom I have delivered Two promise
Buts of Muskevel, assume to transport it for a to carry
certain Sum of Money; this is a good Promise, Goods
and if one of them by a long and careless keeping
of them, run out; I may have this Action. Noys
Rep. 114.

About a
Retaining
of a Debt,
to satisfie
another
Debt.

If one owe me Twenty pound, and I Buy Goods of him to the value of Five, and it is agreed between us, that he shall keep up this Five pound towards his Twenty pound; If I Sue for my Twenty pound, it seems that this Contract will not barre me for the Five pound. Fitz. Debt. 56. Sed Quare, if an Action of the Case may not be raised for a breach of this Agreement. And

If one promise me, that I shall retain a Rent I owe him for Honey, he is to pay me; it is said I may not plead this in a Barre to a Suit for the Rent: But I may perhaps ground an Action upon the Promise, if there be a Consideration for it. Mich. 9 Jac. B. R. Jarvis's Case.

Promise
to pay Mo-
ney, and
take away
Goods
bought.
To deli-
ver Corn
yearly for
life. Dama-
ges.

If one, Because I have sold to him so much Wood, assume to pay me so much Honey, and carry away the Wood before such a day; this is good, and Action will lie upon it as there is cause. March. Rep. 100.

A. doth assume to B. to deliver to him Twenty Quarters of Corn every year during their Two Lives: And that B. shall pay to A. for every Quarter Four Shillings; in this Case B. may have this Action for every failer, and shall recover Damages for this time only, and not (as it seems) for all the time forward. Dyer 113. Co. 4. 93.

To relin-
quish a
Rent,

Mutual
Promise.
Pleading.

If one that hath a Rent out of Land, promise to another to relinquish it, and he, in Consideration of this, doth promise to pay Thirty pound; this is a good Contract. But in alleadging, that he did relinquish the Rent; it is not enough to say so, that he did relinquish the Rent, and did not claim it, but he must shew how; for it may be by Words, and then it is no discharge. Cro. 1. last published 392.

If I lay Money on a Wager, and put into a Third Mans hand; he that wins it shall have it; and the loser hath no remedy for his Money again. Agreed at Sarum Assises 9. Car. 1.

About a Wages lay.

If I promise to my Tenant, or to a Parson (being a Parson) that in Consideration he will Plant his Land with Hops, and so make it the better; or (in the Parsons Case) make the Tithe the better, I promise to allow him Two Shillings towards every Acre so Planted; this Promise seems not to be good. Winch. 80.

Promise to allow for Planting.

If one in Consideration that I will be bound for his appearance, he being arrested on a Recognisance, promise me to appear at the day; and do not, I may have this Action for this; and it will not excuse him, that a Certiorare came to remove the Record, for I must appear notwithstanding. Adjudged. Trin. 9 Jac. B. R. Roll's Case.

To appear in Court.

If one have a Dog of mine, and assume to deliver him to me on request, and do not, I may have this Action; for a Dog is not fera naturæ. Owens Rep. 95.

To deliver me my own Dog.

If one, for good cause promise that he, or another, shall make me a Release of all his Right to such Lands, or of all Actions, &c. this is a good Promise to give an Action. 14 H. 6. 18.

To make a Release to me for a Release made by me.

If one promise me, that in Consideration I will accept Twelve pound Ten Shillings of him in discharge of all Accounts between me and his Brother, and Seal a general Release to the use of his Brother; that his Brother shall Seal the like general Release to my use; this is a good Promise, and performed by the payment of the Money, and the making of a good Release. Croo. 2. 13.

To suffer
a Man
Land to
descend.

If one in Consideration that his Son will pay him such a Debt, promise him that the Land shall descend to him; this is a good Consideration and Promise. Bulstr. 2. part 18, 19.

To assure
Land to
me.

If one upon good Consideration, promise to make to make me a good Assurance of such a piece of Land; this action lyeth if he doth it not, and this is the most proper remedy, and not to lye into Chancery. Bulstr. 1 part 112, 113.

To assure
Land.

If one in Consideration of Twenty pound paid, promise to assure me such Land, by such reasonable Assurance, as by me shall be desired and required, this is good, and Action may lye upon it. But then I must be sure to have a reasonable Assurance drawn, and tendred to him, and therefore it may not be a Feoffment without Covenants, or the like. Croo. 4. 571.

That a
Man shall
enjoy
Land.
Part 12.

If one for a good Cause promise me I shall enjoy such Lands in possession, and that he will save me harmless concerning any Action, and Suit against me for them; this is a good Promise; and if a Judgment be had against me for them in an Ejectione Firmæ, and for Damages and Costs, I may have this Action; albeit no Execution be upon the Judgment. Croo. 1. 254, 255.

To pay
me the
Rent re-
served on
a Lease.

If one in Consideration that I will demise Land, promise to pay me the Rent, &c. for the time at the days, after I make a Lease accordingly, and had not paid his Rent; it seems this is a good Contract, on which an Action may lye. But if it had been an implied Promise upon Sale of Goods, &c. the Action will not lye. Croo. 1. 299.

That he
shall qui-
etly enjoy
Furzes
sold.

If one in Consideration of an Hundred and Thirty pound paid, and secured to be paid by me, Bargain and Sell all the Furzes growing on such a par-

a parcel of Land, to be taken before Michaelmas next, and I in Consideration assume to him, that I will peaceably permit him to enjoy the same Furzes, and quietly to carry them away without disturbance; this is a good Contract, on which Action may arise on either side. Croo. 1. 357.

If one in Consideration that I do occupy his Land, and have paid him his Rent for such a time, assume to save me harmless for my occupation past and to come; this is good, and for any molestation before, if I be after troubled, I may have this Action. Croo. 1. last published 94.

To save me harmless for my occupation of his Land.

If I suffer a Man to occupy a Ware-house in London, and the Tenant doth assume to pay to me for every week he enjoys it Eight Shillings; this is a good Promise, and this Action may lye upon it; for it is no Lease at will, or otherwise, nor Rent; for if so this Action will not lye for it, but an Action of Debt. Croo. 598.

To pay me Rent for a House whilst he hath it.

If Two in Consideration of Six pence, given by the one to the other, assume each of them the one to the other, to stand to the award of J. S. for all Matters and Controversies between them; so as the award be made before the last of September following; this is a good Consideration and Promise on each side; and upon it an Action may lye for the one against the other. Croo. 1. last published 861. For Assumpsits express to stand to an Award. See Croo. 1. part last published. 343. 344. 432. 861. 904. Croo. 2. 315. 30 Eliz. Moore and Beedles Case. put in Osborns Case. Co. 10. 138. Jenk. Century 8. Case 67. Yelverton 35. March. Rep. 108.

To stand to an Award.

If a difference between two be referred to a friend to compound, and he order one of them to enter into

into

into a Bond to pay so much Money to the other, and afterwards he doth promise to do it; this may perhaps be a good Consideration. Hetley's Rep. 126.

If a Controversy be between me and another about Land; and we agree to refer it to A. B. and each of us do promise to the other, that if A. B. shall judge the Copy (in question between us) good, to make good his Title, that then I shall suffer him to enjoy the Land without trouble, and if he shall judge it not good to maintain his Title, that then he shall deliver up the Land to me without Suit; this is a good Consideration and Assumpsit, if pursued. Leonard Rep. pl. 137.

If one upon good Consideration promise to become bound to another by his Obligation to do an Act; and if he do not become bound, this Action will lie against him. And the Plaintiff is not bound to tender him an Obligation, but the Defendant hath took it upon himself to do it. Brownl. and Goldsb. 10.

If one promise (for a good Cause) to pay me Eighty four pounds out of the freight of a Ship; this may be a good Promise. But then I must in my Suit upon it, make it appear what freight is due for the Ship, out of which the Money is to be paid; and alledge a Demand of it. Sciles Rep. 220.

Upon
proof to
pay Mo-
ney.

If one for Twelve pence Consideration, assume to him that gives it, that if he can prove, that such a one did cut a Tree upon the Land of A. B. that he will pay him Ten pound; this it seems is good. Winch. 101.

If one in Consideration that I will pay Two and Fifty pound Fourteen Shillings to his use such a day;

a day, &c. to one Playford, to whom he oweth so much, promise to deliver me my Bond, in which I am bound for the Money to him when he shall be thereunto requested; this is good: But a special Request must be, and be pleaded in the Case. Popham Rep. 160.

If one, in Consideration that I by my undertaking will get a discharge of a Debt my Father doth owe me to A. B. that he will save me harmless, and I undertake the Debt to A. B. and discharge my Father, and after I am Sued for it; I may have Action upon this Promise for my relief. Leonard Rep. pl. 141.

If I be about another Mans business, and he speaking of it, say to me, Do it, and I'll repay you whatever you lay out, this is good: And if I sue upon it, I must shew what I have laid out, and about what I have laid it out. Herley's Rep. 122.

If one be indebted to me, in a Barter, for Wheat, and Oye; and his Administrator, in consideration that I will deliver to him Six Barrells of Wheat, assume to pay me that the Antestate did owe me, and this also, and I do so; I may have this Action for both, and have one Judgment and Execution de bonis proprijs. Croo. 1. last publisht. 406.

If one in Consideration that I will deliver to A. B. his Son such Wares as he shall desire, promise to pay me for them; this is a good Promise, and if I deliver to him, and he accept of me, Wares, albeit I shew not a special desire of them, I may have this Action upon the Promise. Stiles. 163.

If one, in consideration that I will assure him such Land as Counsel shall advise, promise to pay Thirty pound, (viz.) Five shillings in Hand, Nine

To deliver up a Bond when the Money is paid.

To save me harmless for an undertaking.

Promise to pay what I shall lay out in a business.

To pay Money.

Part 13.

Nine pound Fifteen shillings at Midsummer, Ten pound at Michaelmas, twenty pound at Christmas; this is a good Consideration and Promise. Bendloes 158.

Husband
and Wife.

Confide-
ration va-
luable to
deliver
Money.

Promise
of Money
to do a
Business.

Infimul
computa-
verunt.

Forbear-
ance.

To pay
for Wares
delivered.

One Declared, that in Consideration that his Wife dum sola fuit, &c. 1 June. 43. Eliz. at the Defendant's Request lent him Thirty pound to be paid to her upon Request, that the Defendant did assume to pay it to the Wife upon Request; this was adjudged a good Promise and Consideration: But if I shall deliver to J. S. a Bag Sealed with Money, and in Consideration hereof, he promise to redeliver it to me upon Request; this Action will not lye upon this; for J. S. can make no benefit by this, as he may of Money at large delivered to him. Yelverton Rep. 50.

If I have a Cap. ut legatum against another, and I promise J. S. that if he will go to the Sheriff, and procure a Special Warrant, and Arrest the Defendant, that I will give him Forty shillings; it is said this Assumpsit is void by Stat. 43 H. 6. Noy's Rep. 77.

If the Husband of M. and J. upon an infimul computaverunt between him and me, be indebted to him and me a Hundred pound; which he promiseth to pay, and dyeth; and M. his Wife fearing I will sue her for this, comes to me, and requests me to forbear till Michaelmas, and in Consideration of that, promiseth to pay me; this, it seems is good enough, and Action may lye upon it. Noy's Rep. 81.

If one promise me, that if I will deliver certain Wares to his Daughter, that he will pay for them; this is a good Promise, and it shall be intended, that he will pay me for them. Noy's Rep. 83.

If one put Cloth to me, a Taylor, to make him Clothes, and promiſeth to me as much as I ſhall deſerve for the making of them; this is good Noys Rep. 85.

If A. recover Fifty pound of M. and then B. promiſeth, that if A. will forbear Execution of it, that he will pay to him Fifty pound at Midſummer next, or a Hundred pound after, if it be not paid then, &c. when it ſhall be reaſonably requeſted; this is good, but in a Suit upon this promiſe the requeſt muſt be expreſſly averred, Noys Rep. 95.

If one in Conſideration, I will let him enter into, and enjoy my Houſe, aſſume that he will pay me Thirty ſhillings a year, during the time he ſhall enjoy it; this is good, but it will be doubtful, whether he may divide his Action for the Rent, or muſt not bring one entire Action, Healeys Rep. 53.

If there be a queſtion between me and another about a Rent, I do Challenge, and I Threaten to ſue him for it; and he aſſume and promiſe, that if I will forbear the ſuing of him for it till ſuch a time, and then ſhall make it appear to his Brothers that it is, and how it is due, &c. that he will pay it; this is a good Conſideration and promiſe, and being purſued, may raiſe an Action for the breach of it, Bulſtr. 3. 21.

A H. in Conſideration of a Hundred pound, doth aſſume to K. that the Lady Weſton and her Son ſhall ſell to K. ſuch Lands, provided that K. ſuch a day certain, pay to the Lady and her Son Two thouſand pound, at which time the Lady and her Son ſhall be ready to aſſure and convey to K. the ſaid Lands; and for want of payment of the ſaid Two thouſand pound at the ſaid day, that K. ſhall loſe the ſaid Hundred pound, and the Contract for the

Promiſe to pay Rent for a Houſe.

Promiſe upon for-
bearance
of a Rent,
and proof
that it is
due, to
pay it.

To make
an Eſtate.

How taken.

Land shall be void; this agreement is good: But if K. be not ready with his Two thousand pound, the Lady is not bound to assure, nor can K. have any Action against her, as if he be ready with the Money, and pay or tender it, Godb. Rep. pl. 337. Trin. 21. Jac. Killigrews case, See Croo. 1. part last publisht. 337.

Sect. 8.

By way of Bargain and Sale, and what shall be said such a Bargain and Sale, with, or without a Warranty, on which this Action may be grounded, or not.

With a
Warranty
Part 1.

This Action will lye in some cases upon a Contract of buying and selling, the which is sometimes with, and sometimes without a Warranty: And this (in this case) both sometime respect the property of the thing sold, and sometimes the quality of it: And Warranty is the cause of an Action, in case of vendition as well as of corruption, 19 H. 6. 9. So that if one sell me any living, or dead thing, and warrant it sound and right, and if it be not so, I have this Action, Kelw. 89. 9 H. 7. 22. F. N. B. 94. 98. The Warranty must be made by the man that sells, and not by a stranger, and upon a sale by the owner, and not by a servant; otherwise it is not binding, 11 Ed. 4. 6. And whether the price be paid or not, is not material in this case, for Debt lyes for it, 9 H. 7. 21. pl. 2. 5 H. 7. 41.

Debt.

Horse.

If one sell a Horse to me, lame, or diseased in his legs, or eyes, and know it, and warrant him to me sound, I may have this Action against him, T. 7 Ric. 2. Ley 42. 31 H. 6. 11. So if one sell me a Horse

Horse sick, and warrant him sound, and know it to be otherwise, N. B. 94. C. 7 R. 2. 42. Regist. Orig. 166. Lib. Intr. 9. B. sect. 1. But if it be such a fault as the seller doth not know of, some say the Action will not lye. F. N. B. 94. But it seems the Law is otherwise, and alike in both cases. But if a man sell me a Horse, or other thing, and warrant it to be otherwise than it may appeare to him that hath his five senses; as a Horse to be sound, and he is straining; or hath a Splint, Spavie, Wopl, or is lame, or warrant Clothes to be red, and they be blew; no Action will lye upon this Warranty, 13 H. 4. 2. 7. H. 4. 14. 5 H. 7. 41. 20 H. 6. 37. 31 H. 6. 11. And yet, see Croo. 631. where it seems to be held, that in case of a Warranty made at the time of the sale, an Action will lye, Ideo Q̄rre. If he warrant him to me sound wind, and limb, and he hath some secret disease known to the seller, not visible to the buyer, as if he be shoulder-hot, or the like; I may have this Action against him, Adjudged, Trin. 18 Jac. B. R. 11 Ed. 4. 6. 13 H. 4. 1. But if the Warranty extend to a thing to come, as that a Horse shall carry a man Thirty miles a day, or the like; this it seems is not binding, Finches Ley 188.

If a man sell me Cloths, and warrant every one of them to be of such a length, and they be not so; it is said, I may have this Action for this. But if the Warranty be for such a colour to a buyer that hath his eyes, and they be not of that colour, this is not actionable, 11 Ed. 4. 6. 7. Deceit. 23. 14 H. 6. 22. Action upon, &c. 9. And there it was said, if a stranger shall warrant a thing sold me, that this is void: So if my Servant, that shall sell my goods, warrant it; no Action will lye against him, 11 Ed.

Master,
Servant.

4. 6. So if one warrant Cloth sold to me, that it is well filled, when it is raze, 11 H. 6. 221.

Warranty
to, or by
a Servant.

But if a thing be sold to me, that am absent from it at the sale, and the Seller warrant it, I may have advantage of this, albeit it be about such a thing as I might have discovered, if I had been present, 14 H. 6. 22. Action, &c. 9. If the Servant sell by Cobin of the Master, and the Master agree to the Warranty, he may perhaps be chargeable with it, 9 H. 6. 53 pl. 37. 11 Ed. 4. 2. Old N.B. 50. F.N.B. 94. 98. 5 H. 7. 41. 9 H. 7. 22. Kelw. 89. If my Servant sell my Horse, or other Goods, and he warrant it, and it hath a secret fault, the buyer can have no Action against me upon this Warranty; for the Master cannot be bound by any Act of the Servant, but by such as he doth agree unto, Doct. and Stud. 138. 9 H. 6. 53. Bridgmans Rep. 128.

Buyer ab-
sent at the
time of
the bar-
gain.

Corn or
Grain.

If one sell me Corn, or Grain, and warrant it good, and it is not so, I may have this Action, Lib. Intr. 9. B. Regist. Orig. 111. A. See Noys Rep. 124.

If one sell me Sheep, and warrant, and promise them to be sound, and to be well worth Nine pound a score, and if they be not of such a value, that he will make them worth Nine pound a score to me in ready money; this is a good promise, and if they be sound, or not worth so much, I may have this Action against him upon it, Yelverton. 114.

Wood.

If a man sell me Wood, and shew me a part of it, and warrant the rest of it to be as good as that; if it be not so, I may have this Action, 14 H. 6. 22. pl. 66. Action, &c. 9.

Saphire.

If one sells me a Saphire for a Diamond, and warrant it to be a Diamond, and it be not so, I may have this Action against him upon this Warranty, Kitch. 174. Survey of the Law. 106.

A Warranty of a thing that is out of a mans power, as that seed shall grow, or the like, is void, Part 1. and no Action will lye upon it: But to say that it came out of such a Garden, or out of such a Garden or Countrey, is good, and may be Actionable, if not true, 11 Ed. 4. 6. 7. Deceit 23. But if I warrant Sheep I have sold, that they shall be sound for a year; this is good, and an Action may lye upon it: So a warranty that such a Ship shall return safe to Bruges, Owens Rep. 60.

If the sale be at one time, and the warranty afterwards at another time, or place, albeit it be by the same person, yet it is held to be void, and that no Action will lye upon it, 5 H. 7. 41. But if it be by Writing Sealed, &c. he may have an Action of Covenant upon it, 9 H. 6. 53. 14. H. 6. 24. 15 Ed. 4. 8. Warranty after the Contract. Covenant.

A Warranty therefore upon a Sale that shall bind, must be made at the time of the sale of the thing, Stiles Regist. 344. 15 H. 7. 41. N. B. 98. L. And not afterwards, Dyer 75. 5 H. 741. 11 Ed. 4. 6. Paschæ 3. Jac. B. R. Goldsmiths case. Bridgmans Rep. 126. Croo. 2. part 4. 29 Ed. 3. 25. 26.

If a man sell me corrupt Wine, or Victuals for good, and warrant it good, and it be not so; I may have this Action. And so some say for this, where there is no Warranty, Dyer 75. 9 H. 6. 53. Action &c. 5. 7 H. 4. 15. Fitz. fol. 94. And so it seems clear of dead meat. Action, &c. 27. And yet it is said, that if the Vendee shall taste it, and accept it for good, no Action will lye for it, H. Action upon the case 48. 15. And yet if the Seller undertake it shall endure good untill, &c. and it doth not so; he may have Action for this, P. 7 H. 4. 15. Action, &c. 27. Victuals.

If one sell me Twenty Sheep to kill, and they be corrupt, I may not have this Action for the receipt, without a Warranty: But if he sell dead Mutton corrupt, I may have it, for by the Law no man may sell corrupt Victuals by the Statute. F. N. B. 98. K. 5 H. 7. 41. 11 Ed. 4. 6. Decept. 23. So of corrupt Wine, 7 H. 4. 15. Action upon the case. 27. See after.

Herrings.

If one sell me Herrings, and warrant them good, and they are naught; this Action lyeth, Regist. 96. A.

Physician,
or Chirurgion,
Farrier or
Smith.

If a Physician, or Chirurgion, Farrier, or Smith, warrant a Cure, for good Consideration, and doth what he can, or ought to do for the Cure, and doth it not; it seems this Action will lye upon this, 48 Ed. 3. 6. For if a Chirurgion for a man, or a Farrier for a Horse do warrant or promise a Cure, and do not cure, although he be not negligent; this Action will lye against him: And if he undertake the cure without warranty, and be negligent, an Action of the case lyeth, Plow. 305. Doct. and Stud. 105. 17 Ed. 4. 25.

Cure.

Without
a warrant-
ry.

About a
sale of
goods, &c.

If one sell me for good Consideration, Twenty quarters of Corn, or Malt, and after convert the same to his own use, after I have demanded it, and he hath denyed it, it seems, I may have either this Action, or an Action of Detinue at my Election, 20 H. 7. 9.

Implicit.
Assumpsit.
Count.
Request.

This Action will lye for Money upon the sale of any personal things, 33 H. 8. Brog. Action of the case. 105. 110. 2 R. 3. 14. Com. 102. For in every Contract there is an Assumpsit implied, Co. 4. 94. And he need say no more in his Count, but *scilicet* Requisite. Pasche 28 Eliz. Co. B. For hath he need to say, that he was possessor, *ut de bonis propriis*. Trin. 7 Jac. B. R. Fitz. William & Blackman.

It will lye against a Purveyor, or Servant that buyes goods for his Master, and promises payment for it, Dyer 230. 12 H. 8. 12. Servant. Part 3.

So against him that shall promise to me, a Baker, to pay to much as he shall deliver in Bread to B. 29 H. 8. 25.

So upon a promise to pay for Cloth bought of me by B. if B. doth not pay for it, 12 H. 8. 12. To pay for Cloth.

If I sell to B. two weights of Barley, for as much as I have sold to others; in this case the Contract is good: But in my Action upon it, I must shew for what I sold to others; and I must give notice thereof to the Defendant. Count. Notice.

If one sell me Coyn, and promise to deliver it me at a day, and I pay, or promise the Money for it, or I give earnest, or pay part of the Money, and he doth not deliver it at the day; I may have this Action, 20 H. 7. 9. Dyer 22. 113. Co. 4. 94. So if he promise to deliver me good, and Merchantable Coyn, and doth not, Dyer 75. 6 Ed. 2. 6. For not delivery of goods sold.

If one buy any thing of me, and do not take it away in convenient time, but suffer it to lye upon me, to hurt me, I may have this Action against him, B. 13 H. 4. Action of the case. 48.

If one sell me another mans goods for his own, knowing them to be none of his own, I may have this Action, otherwise it is if he do not know it, Croc. 1. last publisht. 44. And therefore, if one take away anothers Horse, and sell him to me as his own, and after, it is taken from him upon an Execution for the owners Debt; I may have this Action against the seller, 42. Ass. pl. 8. Action, &c. 42. The declaration therefore in this case must say, Sciens, that they were the goods of a Stranger, or it is not good; Croc. 1. last publisht. 44. Croc. 2 part 196. 197. See Deceit. chap. 6. Deceit. Sale of anothers goods to me. Deceit. Count.

Wase .

If one upon a Contract of sale, promise to deliver me good Gum, and deliver me bad; or sell me good Wax, and deliver me bad; I may have this Action. So for other things, in like case, Mich. 7. Jac. B. R. Weston and Deighton, Survey of the Law. 107. Dyer. Dyer 75.

Viſuals.

If one sell me corrupt Viſuals, Bread, Beer, Apothecaries Drugs, Railons, or other thing for Food, or Physick, and know it to be corrupt and unwholesome; I may have this Action for the damage done to the health of my body, 19 H. 6. 53. 22 H. 7. 91. 1 Ed. 4. 6. Kelw. 91. 11 Ed. 4. 6. Croo. 2. part 196, 197.

So if one shall sell me Wine mixed with Water, N. B. 88. F. And yet if the buyer, or his Servant, shall see and taste the Wine, or the Wine, and like and accept it; in this case he cannot have this Action for the Deceit, 7 H. 4. 16. 13 H. 4. 2. But for false and sophisticated Wares, or Percrandizes sold, no Action (as it seems) will lie, unless there be a warranty in the case, Dyer. 75, 76. And yet see Kelw. 89. 7 H. 4. 10. 13 H. 4. 2. 9 H. 6. 52. 11 H. 6. 22. 19 H. 6. 49. F. N. B. 88.

A Horſe.
Deceit.
Cloth.

If one sell a Horse that is not sound to me, and know it to be unsound, albeit he do not warrant him sound; yet I may have this Action, Co. 4. 18. 42. Ass. 8. So if one sell me naughty Cloth for good, knowing it to be naught. 21 H. 7. 91. See before. But if one sell me a Horse which is unsound without any warranty, and I know him to be unsound; I can have no Action upon this sale, F. N. B. 94. 31 H. 6. Stathum. Action, &c. pl. ult. 7 R. 2. Monstrame de Fait. 160.

Grain.

So if one sell me Corn, or Grain, and warrant it to be good, and it is not, Lib. Intra. 9. B. Regist. Orig. 111.

If

If one sell me Land, Goods, or Cattle for his own, that are none of his own, and the thing is afterwards taken from me, or I be molested about it by the right owner; I may have this Action, Co. 4. 18. 42. Ass. 8. Broo. Action; &c. 85. Fitz. 4.

Deceit.

If one sell me Land, and agree to make me an Estate of it before a day; and this is upon good Consideration, and he perform it not; I may have this Action.

Sect. 9.

How such a Contract shall be taken; and where it shall be said to be performed, or broken, or not.

For the opening of the answer to this Question, take these things. Part 11

1. That every Contract is ruled much by Equity, and the Law doth much heed what is according to equity therein.

2. That the intent of the parties to the Contract doth much rule therein, and is more heeded in Law than the form of words. And therefore if they agree upon a thing, and the words spoken or written to declare their agreement, be not apt and proper, yet if their minds can be gathered by it, it may be good enough. And the words to find out their minds therein shall be taken according to the common acceptance of such words in the time and place where they are spoken.

3. That a thing uncertain therein, for time, place, or otherwise, may be made certain by a necessary coherence, and relation to other things, Popham. 182.

4. That in case of a doubtful & uncertain Contract, wherein

wherein there is a Sale, the words shall be taken most in favour of the buyer, & most against the seller.

5. That the whole Contract may be considered together, and as an entire Agreement: Or in the parts thereof, as it doth consist of an Inducement, Cause, or Consideration, and of a Promise or Assumpsit: And therefore as each part thereof is to help to shew the meaning of another part thereof; so it is to be considered as the Consideration of a Promise, and the Promise it self: And in both, the intent and meaning of the Parties to be pursued, and performed, not in the Letter, but in the substance of it, Yelverton 87.

But for the further opening hereof, take (for the present) these following Cases.

Conside-
ration
perfused.

If one, in Consideration that I will procure him the Loan of Ten pound for an entire Year, assume to make me a Lease of such a House for three Years, this is good: But it will not be sufficient to set forth I did procure him the Money, some at one time, and some at another; and yet if it be of several Persons; or part at one time, and part at another time, so it be all in one day, that he hath it a full Year, it is good enough; the Consideration must be performed in the Substance, as well as in the Letter of it: So if it be to be paid in Gold, payment in Silver is not a performance, nor will the acceptance of it by the other amend the matter, Yelverton. 87.

If one have Seventeen Tods of Wool by him, to sell, and I bargain for Fifteen Tods of it at my choice, and he, in Consideration of Six pound to be paid by me such a day, promise to deliver it me such a day; this is good: But if I sue upon it, I must shew that I have chosen out my Fifteen out of

the Seventhén Tod, for this a condition precedent : And yet if he sell any of it befoze my choice made, this will make the Promise absolute, and will be a Breach of it ; So if he deny me to see it, and make my choice of it, Yelverton. 76.

But for a further clearing hereof, as to the Consideration past, See before divers Cases in this chap. sect. 6. part 5. 10. 13. 27, 28, 29, 30, 31, 32. sect. 7. part 3, 4, 5. 10.

If a Contract be for Sale of Tods, Pounds, Bushels, Bars, or Ells, of any thing, it shall be accounted, Measured, and Reckoned, according to the Custome of the place, and not according to the Statutes, Kelw. 87. 17 H. 8. 14. Plow. 41. 140.

If an Agreement be in Lincolnshire for Eight Strikes of Corn, this shall be taken for a Bushel of Corn, for Eight Strikes there make a Bushel, Bulstr. 1. part 135. If a Contract be to give for a thing Twenty French Crowns, this shall be taken for Six pound, Croo. Rep. 1. 141.

If one agree for the Buying of any thing at the Twenty price of Twenty Pieces, it shall be taken for Twenty Pieces of Gold, of Two and Twenty Shillings a piece, for this is the common Intendment of the word. So a Silver Sale may be taken for a Silver Salt-seller. French Pieces shall be taken for French Crowns known here, Croo. 1. 141.

If one promise to give me a Cup of Wine, if I come to his House, if I do so, I must have but Wine in a Cup, and not the Cup also, Bulstr. 1. part 175. 27 H. 8. 27. Plow. 86.

If a Contract be for Twenty Barrels of Ale, or Twenty Ten Bottles, or Cups of Wine, the Buyer shall not have the Barrels in the first Case, nor the

Pot

Hogheads
or Firkins
of Wine.

Pottles or Cups in the next Case: But if the Bar^r gain be for the Hogheads, or Firkins of Wine; in these Cases he shall have the Hogheads, and Firkins also, Plow. 86. 17 H. 8. 27. Broo. Contract. 4. Bullr. 1. part 175. And if one promise to do a thing, as make a feoffment, Surrender, or the like; the meaning is, that a good and Legal feoffment, Surrender, &c. be made, Dyer 23, 24. 75.

To make
an Estate
in meat
a good E-
state.

To deliver
Wares,
shall be
taken true
Wares.

Make
good a
House.
Election.
Make
good Mo-
ney.

So if it be delivered Wares, it must be good, not false and Sophisticated Wares, or else it is not said to be performed. And for this, if one promise to make a feoffment by a day, and before the day he Cateoffe another, or grant a Rent Charge out of it, and then make the feoffment at the day; this is no good performance of the Promise, Old B. of Entries, fol. 7. 3 H. 7. 14. Fitz. 8. B.

If one for good Cause promise to make good a House, this shall be taken to Repair it.

And if one owe me Twenty pound, and I say, I will Sue him, and I. S. prayeth me to forbear till Michaelmas, and he will make it good to me; this shall be taken, that he will pay it to me, Mich. 21. Jac. B. R. Keyts Case.

Promise
to do one
of two
things.

If one promise to do one of two things by a day, till the day be past, he that made the Promise shall have Election: But after the day is past, he to whom the Promise is made, shall have the Election, 9 Ed. 4. 39. Coe. 9. 94.

To give a
Bond with
Sureties,
and say
not what
Sureties.
Part 2.

If it be a part of a Promise to give a Bond with Sureties, and say not what Sureties, nor in what Sum, the Court must Judge what Sureties, and in what Sum, Hobb. Rep. pl. 79.

If one be Indebted to another, and he do promise this Debt at a day to come; in this Case the Party to whom the Promise is made, cannot bring his

his Action for the Debt upon the first cause, till the day be past, by two Judges, B. R. Stiles Regist. 31.

If the Promise be to pay Money, and no time set, it shall be paid presently. If to make a Lease for Years, and no time set when it shall begin, it shall begin presently, Cro. 10. 76. 102.

To pay Money, no time set.

But if one promise to deliver me Goods, or to make a Lease, or the like thing, and no time is set for the doing thereof; he shall have all his life time to do it, unless I hasten it by Request; Cro. 6. 33.

To deliver goods no time set.

Cro. 10. 77.

If a Promise be to make a Lease for Years, indefinitely, and say not when to begin, it shall begin presently, Cro. 10. 33.

To make a Lease for years, and say not what Lease.

If I retain a Servant generally, and not say for what time; the Law will construe it to be for one Year, according to the Statute, 23 Ed. 3. chap. 1.

Retain a Servant, say not for what time.

If a Promise be to provide Wedding Apparel for a Woman; this shall be taken for Wedding Apparel to be used the Wedding day, and time of Feasting, which commonly is some dayes after, according to the Dignity of the Person; Cro. 1. 38.

To give Wedding Apparel.

If a Promise be to make sure a Portion of Six Hundred pound; this will be understood that he doth undertake she shall be worth to him Six Hundred pound, Cro. 146, 147.

To make sure a portion of six hundred pound.

If one Promise to me, to make me such an Estate of Land, as my Council shall advise, I must, and may take the advice from my Council, and make it known to him that makes the Promise what it is; and if I do mis-report it, yet if he do that which he reports it to be, he is discharged, Cro. 1. part last published. 293, 299.

To assure Land as Council shall advise. Notice.

If one Bargain, and Sell his Land by Deed Indented

Bargain of Treas.

how it
shall be
contra-
dicted:

Hawks:

vented, and the Trees upon it, and the Wood is not
Indented, so that the Land passeth not; the Trees
will not pass neither, Croo. 11. 48.

If one Sell all his Trees in such a Wood, and it
is agreed that the Wendie shall not cut them till Mi-
chaelmas, and in the mean time Hawks do breed in
the Wood; it seems, the Wendie, and not the
Wendie, shall have the Hawks, 29. Ass. 29. See
Croo. 11. 54.

To assure
as Coun-
cel shall
advise.

Hawks:

If one assume to me, to make me such an assur-
ance of Land, as my Counsel shall advise, and I
advise it my self, and require it, he is bound to do
it as he requires, Croo. 1. last publisht 466.

If one make a Lease of Land for a year, except-
ing the Trees, and Hawks breed in the Trees upon
the Land, the Lessor, and not the Lessee shall have
the Hawks, 14 H. 8. 1; Kitch. 264.

To for-
bear a
Debt.

A Lease,
and say
not what
Lease.

To hold
Land
without
any inter-
ruption.

A Promise to forbear a Debt till such a day, shall
be taken for to forbear to sue for it, Croo. 1. last
publisht 477.

If a Promise be in Consideration of a Lease made,
and say not what Lease, it may be any Lease, for
Life, Years, or at Will, and therefore not a good
Consideration alone, Croo. 1. last publisht 566.

If the Lessor assume to the Lessee for good Con-
sideration, that he shall hold the Land without the
Let of any Person whatsoever; this shall be tak-
en, let by one that hath, or that hath not Title,
Dyer 328. Mich. 7. Jac. B. R. Gambles Case.

To give
day of
payment
of money.

A Consideration that the Creditor will give the
Debtor day of payment for a former Debt for one
year, is a good Consideration, and it shall be taken
in the Common sense, for the deferring of the day
of payment, Croo. 1. last publisht 643, 644.

To enter
into bond.

If a Promise be to enter into a Bond to pay Mo-
ney,

ney, and no Sum exprest, the Sum shall be twice as much as the Money to be paid, Croo. 2. 115. So if it be for another thing, it shall be a reasonable Sum, Croo. 2. 652. not saying in what sum, to pay Money.

If my Tenant at will of my House, promise for good cause to save me harmless, and indemnified from all Loss and Harm by reason of his Inhabitation in the House, and the House is burnt by the neglect of his Servant; this is a Breach of his Promise, Coventries Case. To save harmless. Part 3.

If I promise to I. S. that his Goods shall come safe to Dale, and they be Arrested by the way; this is a breach of Promise, and Actionable, Croo. 3. 47. That goods shall come safe to Dale.

If one be Indebted to me Money for divers causes, assume to pay the same to me before the beginning of my next Journey to London; if I sue for this, and set forth a Journey, I must aver it to be next Journey to London, Yelverton 175, 176. Averment

If one be bound to do a thing by Law, the which he hath also undertaken by his promise to do, if by Law he be now discharged, perhaps he may not be bound by his promise, Yelverton 207. Discharge of an Assumpfit.

If one for good cause promise me five pound, or a Crown such a day, he that is to pay hath the Election till the day; but after the day, he to whom it is to be paid, shall have the Election, 9 Ed. 4. 39. Fitz. Debt 89. Election.

If one promise another, he shall enjoy Land for five years, and he, in Consideration thereof, promise to pay him Twenty pound for every Year at two Feasts; here several Actions will lie at every day; but if the Promise be, he shall enjoy the Land for five years, and for this shall pay him a Hundred pound in five years, viz. Twenty pound per Annum; there no Action will lie till all the time be Money to be paid at several times.

be past. Croo. 1. last publisht 118. Owens Rep. 42.

If one, for good cause, promise to deliver to me Twenty Quarters of Barley every year during my Life, if he fail once, I may have this Action, and so upon every failer. But herein it will be wisdom in the Plaintiff, to declare, and to lay down his Damages for all the time; for happily he may not have the advantage of a new Action, Croo. 505. Yelverton 66. 67. But in these things it seems the Law was otherwise taken heretofore, See Bendl. 3. 158. Croo. 3. 22.

So if a Sum of Money be given in Marriage to be paid at several dayes, and hereupon one failer, perhaps he may have Damage for all, Dyer 113. Broo. Action, &c. 108.

Debt.

If one promise to pay Money at several dayes: yearly, or Quarterly, no Action of Debt will lie, till all the dayes be past. But this Action of the Case will lie after the first day, Croo. 1. last publisht 776. 807. Croo. 2. 504. Croo. 10. 128. 12 H. 6. 18. Bullstr. 1. part 155. 2. part 136. Croo. 4. 94. Dyer 113. Broo. sect. 1. Croo. 1. 175. 492.

Deceit.

If one be indebted to me Two Hundred pound, and delivereth to me Two Hundred pounds worth of Goods to sell, and pay my Debt, and I am prosecuted Two Hundred pound for them, and I refuse it, and afterwards sell them for a Hundred pound; in this Case he hath no remedy, but must pay me the residue of the Money: And yet if there be any Fraud between me and the Buyer, perhaps he may have relief in Equity, 18 Ed. 4. 5.

Equiry.

About
Trees.

If one Contract with me for all the Trees in his Woods; by this I have a power to Cut them down, and carry them away through his Grounds, where they grow; and this, it seems, I may do, when

I will. But if one Sell me all his Fish in his Pond, I may not now upon this Contract Dig a Trench, and let out the Water to take them. But I may take them by Nets, or other Engins as I can: Or if that be not to be done, then may I take them by some other means. So if a Lessee Sell his Ground, excepting the Trees, he may now go upon the Ground with one that would buy the Trees, to sell them to him, and after they be bought, the Buyer may go upon the Ground with his Carts, and take them away, Co. 11. 52. Plow. 15, 16.

About
Fish.

If I Sell my Horse to A. B. for Twenty Shillings, which he hath paid to me, and I refuse to deliver him the Horse, he may have this Action against me, but not till he hath paid the Twenty Shillings.

Delivery
of goods
sold.

If one assume to demise a Personage to another, and say not when, he must do it in a reasonable time, two Months hath been adjudged reasonable; But Quere what estate for Life, or Years, Noys Rep. 65.

To do a
work, and
say not
when.

If a Contract be made upon good Consideration to do a thing, he that promiseth to do it, shall have a reasonable time to do it, and not have Liberty to do it at any time during his Life, Hill. 22 Car. 1. B. R.

If a Promise be that I. S. shall dwell in a House during the Term, this shall be taken for the whole Term: But if the Promise be, that he shall not do such a thing in the House during the Term, this shall be taken, that he shall not do it at any time during the Term, Bulsr. 2. part 136.

During
the term,
how taken
Part 4.

If one promise for Ten pound paid him in hand, to Build a House; this is conditional, and he is not bound to do it, till the Ten pound be paid. And

To build
a House.

Condi-
tional pro-
mise.

Recipro-
cal pro-
misses.

To enter
into bond
with Sure-
ties.

To deli-
ver wares,
it must
be good
Wares.

To make
an Estate,
it must be
a good
Estate.

To con-
vey Land
to A. and
he doth it
to ano-
ther.
Give cre-
dit for
I. S.
Request.

it is not like to this; where one doth promise to Build a House, and the other doth promise Ten pound, here the Promises are Reciprocal, and give Action to each of them, the one against the other, See sect. 6. part 29.

If it be a part of an Agreement to give a Bond with Sureties, and the say not what Sureties, nor in what Sum, the Court must set down how many Sureties, and in what Sum, Hobb. Rep. pl. 79.

If one promise to deliver Wares, and he deliver false and sophisticated Wares, or promise to make a Surrender; this shall be taken for good Wares, and a good Surrender in Law, and therefore the delivery of false Wares is not a performance: So neither of the Surrender, that is not good in Law, Dyer 75. 23, 24. 37 Eliz. B. R. Sleighs Case. So if he promise to make an Estate of Land by Feoffment, Lease, &c. by a day, and he make it away, or charge it with a Rent, or the like, and then make the Feoffment, this is no performance of the Promise. So if one Sell me Trees to be taken before such a day, and he Sell them away to another before the time: Or Sell me a Horse to be taken such a day, and before the day he Sell it to another; this is a breach, Dyer 22. 21 H. 7. 41. Co. ro. 130. Kelw. 77. 20 H. 6. 34. F. N. B. 99. K. Book of Entries. 7. Fitz. 8. 3 H. 7. 14.

If A. promise to convey Land to such a one as B. shall name, and he convey it to B. himself, and he accept it; this is a good performance, Mich. 13 Jac. Co. B. Hulligo and Wild.

In Consideration that one will give Credit for my Son, it shall be taken for to engage, or give his word for him, Brownl. and Goldsb. 15, 14.

If one promise, in Consideration of a Hundred pound,

pound, to Enfeoff me of such a piece of Land upon Request, and after I do request him, and he refuseth; But before the Action brought, the thing is done, and accepted of by me; this is a good performance, or at least will be a bar to the Action, Bullstrode 1. part 38, 39.

Promise broken, dischar. ged.

If the Lessor, upon good Consideration, assume that the Lessee shall hold the Land without the Let of any Person whatsoever; this shall be taken for a Let by one that hath not, as well as for a Let by one that hath a Title; and a Let by either of them will be a Breach, and give Action, Dyer 328, M. 7 Jac. B. R. Gambles Case. But if the Promise be, that he shall enjoy the Land, and no more; this shall be taken as against himself, and all claiming by or under him only, and not of strangers, Bullstr. 2. part 94, 95. 26 H. 8. 3. Dyer 328. 18 Ed. 4. 20.

To enjoy land without the let of, &c.

If one, for good Consideration, promise me, I shall enjoy such Lands according to my Lease, without the Interruption, or Incumbrance of any person; this is good: But if I sue upon it, I must set forth especially what the Incumbrance or Interruption is, Coe. 2. 425. 444.

To free from Incumbrances.

If one Promise to save another harmless from any thing, he that made the Promise ought to do it at his peril, without Request, and Request is not Material, although the Promise say upon Request: And if he be Damified by me, and I do recompence him upon Request made, the Promise is not broken, Stiles 141.

Request. To save harmless.

If one Promise me, in Consideration that I will suffer him to Occupy my Land for five years, that he will pay me at the Feast of All-Saints next, and so yearly Twenty Pound at the Feasts of

To pay Rent at several dayes. Part 5.

the Annunciation, and All-Saints, by equal portions, during the Term; in this Case the Action may be brought after any Non-payment, and the Obligor shall not be restrained to Sue till all the years be expired, Owens Rep. 42.

To pay a short time after Easter.

To save harmless. House burnt.

Count.

If one promise to pay Money within a short time after Easter; this shall be taken for presently after Easter, Bulstr. 1. part 206, 207.

If I lease my House to B. at will, and he, in Consideration that I will permit him to enjoy it till such a day, he promiseth to keep me harmless from all Damage, Rationis Inhabitationis & Occupationis mesuagii predicti, and for every Farthing hurt, that he will satisfy Two pence upon Request, and his Servant suffers the House to be Burnt; it seems the Action lies, although the Parties do not dwell there, M. 9 Jac. B. R. Coventry and Woody. Survey of the Law. 86, 87. But in the Declaration he must Aver to how many Farthings his Loss came, and demand Two pence for every Farthing a gross Sum.

Of a Request, or Demand, or Notice, where to be made, or not; and what shall be said a good Request, or not.

In some Cases before a Contract or Assumpsit can be broken, and an Action brought, there must be a Request or Demand made by him that is to bring the Action, of him against whom it is to be brought: Or a Notice to be given to him who is to do the thing, promised to be done, of something to be done, before the same is to be done. As for Example.

If one Promise to deliver Goods to me upon Request, I must make an Actual Request of them, ere I can bring any Action upon this Promise, 13 Car. 1. B. R. And yet if I deliver Goods to me upon Request; in this Case, it seems, I may Sue for my Goods upon Request.

If one be Arrested for my Debt, and he make an Obligation to me, for his Delivery, to pay the Money at a day to come, but doth not deliver it as his Debt, but assumeth that he will deliver it upon Request; in this Case I must request it: And if I make no request till the day of payment be past, I am remediless in Law, and must Sue in Equity for my Money, Pasche 9 Jac. B. R. Bassets Case.

Equity.
To deliver goods.
To deliver a Deed.

If I promise upon good Consideration to pay Ten pound on Demand, or say not when it shall be paid; in this Case, it seems, no Demand is needful: But if the Promise be to do a Collateral thing, as to pay Ten pound owing by another man, if he pay not himself at Michaelmas upon Demand; in this Case he must demand it before he can Sue for it, 12 H. 8. 12. 17 Jac. B. R.

To pay Money on demand.

If a Promise be made, in Consideration of a Marriage to be had with I. S. that the Defendant, if the Womans Portion shall not amount to Four Hundred pound, will make it up so much upon Request, the Plaintiff must make a Request to make it up; and yet if Non-Assumpſit be pleaded to it, it seems he need not prove the Request, By Baron Henden at Glouc. Assizes. 17 Car. 1.

To make up a portion, if it be not so much.

If I promise, for good cause, to pay another Ten pound; in this Case demand of the Ten pound is not necessary to be made.

To pay Money.

If one promise to pay if he Marry A. S. or when he returns, &c. upon Request; in this Case no Action can be brought. till the Marriage, or Return, and the Request made, Cro. i. 98, 99.

If I have laid out divers Sums of Money for another to such a Sum, and he promise to pay it to me; in this Case, if I Sue for it, I must alledge a Special Request, and set down the time and

place,

place, for it is not due and payable till Request, nor can any Action be brought without it, Croo. 1. last publisht 73, 74.

If I, in Consideration that another promise to Marry my Daughter, promise him Forty pound upon Request; in this Case, and all others, where a Promise is to do something upon Request, there a Request must be made, and in Pleading, must be alleged to be made, Croo. 1. last publisht 774. Croo. 2. 183.

Where a time certain is limited for the payment of any thing, he shall never allege a Request before the day, but otherwise it is where it is Incertain, Croo. 1. last publisht 455.

But where a man hath by Agreement a power to demand; there generally he may make his demand when he will, Croo. 2. 194, 195.

Part 6.

If one, for good cause, promise to pay me Nine pound, which I. S. doth owe me, when the Party promising shall be thereunto required; in this case, because it is a Strangers Debt, and no Duty till the Promise; there must be a Special and Express Request made, and the time and place of it set down, and licet sæpius requisit, will not serve, Croo. 2. 523.

Where-ever I make my promise upon a thing to be done at my request, the Execution of that Act must pursue the Request, and that must be past, ere the Promise is to be performed, Hobb. pag. 145.

Notice of
a Marri-
age.

If I promise Money to the Marriage of my Daughter, or Kinswoman; in this Case, it seems, no Notice needs to be given to me of the Marriage, before the Suit brought; and yet if it be Penal, it is otherwise: And therefore where the Contract is,
that

that if you Marry her, and I do not then pay you Twenty pound in three Weeks, I shall pay Forty pound; in this Case notice must be given of the Marriage, and demand of the Money: So if I promise a Woman, if she will Marry my Son, that I will give her the one half of all my Lands, and Goods; in this Case notice must be given before a Suit can be begun, Old B. of Entries. fol. 4. New Book of Entries. fol. 2. So if I promise a man Twenty pound at his day of Marriage, or when he shall Marry any Woman whatsoever; in this Case notice must be given to me that he is Married ere I can be Sued: But if I promise to one a Hundred pound, if he Marry A. S. my Cousin, it was Adjudged in this Case notice was not necessary, but it shall be intended, that when he Demanded the Money, he gave notice of the Marriage, Croo. 2. 228, 229.

If I am promised by I. S. that if I at his request will take S. M. to Wife, he will pay me a Hundred pound upon request; in this Case I am not bound to give him notice of the Marriage, but may Sue for my Money without it, Yelverton. 168.

If I promise to one Twenty pound, if he Marry my Servant, here no Notice need to be given to me; And there said to be Adjudged. That upon an Assumpsit to pay an Hundred pound upon the day of Marriage, no Notice was shewn, and yet held good, and affirmed upon Error brought, Noys Rep. 123. See Brownl. and Grldsb. 1.

If I have Ten Quarters of Corn, and I Sell one Quarter to I. S. to pay me half a year hence for it, after the rate that I sell the rest; I must sell

and give him Notice how I sell the rest, before I can Sue for this, Hobb. Rep. pl. 56.

If a promise be to I. S. to pay him Money at his first coming to Gloucester; notice must be given to him that is to pay it, when the other doth first come to Gloucester, Hobb. Rep. pl. 63.

If one promise to save me harmless concerning any Suit about my Land, and there be a Suit and Recovery against me about it; I must give him Notice of the Suit and my Damage, and demand it ere I can Sue, Croo. 1. 254, 255. Croo. 1. last published 97.

If I promise, for good cause, to pay Ten pound to I. S. when he shall purchase White-Acre; in this Case he must give me notice of his Purchase, ere he can Sue me for this Ten pound; but if the promise be to pay it, when a Stranger shall purchase it, there it seems otherwise; for this is as much in his, as in my knowledge, Coo. 7. 29. Brownl. 1. part 9, 10, 13. 46.

If one, for good cause, promise to save me harmless from such an Engagement, it is said, I am not bound to give him notice of the Breach of the Promise, before I Sue him, nor to set it forth in the Court, Mich. 9 Jac. Somershals Case.

But generally, where the thing to be done lieth as much in the knowledge of him to whom the Promise is made, as of him that makes it; there no notice need to be given, nor demand made, Coo. 7. 29. And therefore if I promise Money to the Marriage of my Daughter, or Kinswoman; in this Case they need not to give me Notice of the Marriage: But if the Promise be Penal, that if you Marry her, and I do not pay you Twenty pound in three Weeks, I shall pay Forty pound,

in this caſe, the Forty pound muſt be demanded. So if I promiſe a woman, that in caſe ſhe will marry my Son, I will give her the one half of all my Lands and Goods; in this caſe, it ſeems, there muſt be notice before any Suit be begun. Old B. of Entries. fol. 4. New book of Entries. 2. So if I promiſe a man Twenty pound, when he marieth any woman whatſoever; in this caſe, before he ſue me, he is to give me notice of the Marriage.

Notice of
a Marriage

If one promiſe me Money at the day of my Marriage, I need not, nor need I to ſhew in my Declaration, if I ſue upon it, that I gave him notice of my Marriage before I married, Croo. 1. 23. But if a Collateral thing be to be done on the Marriage-day, there perhaps notice muſt be given, although it be to be done to the party himſelf, Bulſtr. 3. part 236.

Notice of
an Award.

If one promiſe to pay me ſuch a ſum of Money upon my Return into England, I muſt ſhew in my Count, that I gave him exprels notice, and the time and place of doing it, Croo. 1. 412. There needs no notice to be given of an Award, but the parties at their peril are bound to take notice of it, Hobb. Rep. pl. 56.

If a man find my goods, or take them from me, or from another that hath them, or if he have them by my delivery, or by the delivery of another, to whom I delivered them, and he either keep them from me, diſpoſe of them, ſpoil, or convert them to his own uſe, or they be ſtollen, or taken from him, and I ſuffer damage by it; I may in ſome caſes for my Relief have this Action of the Caſe, Trover, or other. But I muſt firſt make a demand of my goods.

If one buy Warley of me, and aſſume to pay for

To pay
for Corn
as much as
another
gives.

it as much as) I shall have of any other, abating a penny onely in every Bushel; in this case I must give notice to the Buyer what another gave, and so set forth in my Declaration: But if the Agreement be to pay so much as I. S. paid; in this case no notice is needful to be given, Croo. 2. 432.

To save
harmless
from en-
gagements

If one assume to save harmless I. S. of all obligations wherein he shall be bound for I. N. in this he need not give notice; but may shew that he was bound in an obligation for I. N. from which he was not saved harmless; this is good enough, Croo. 2. 432.

Notice of
a Decree.

If one assume to me, in Consideration that I shall procure such a decree in Chancery, in such a cause there, that he will give me Ten pound for it; in this case I must give him personal notice of the decree: But if he himself, to whom I should give notice, be one of the parties to the Suit in Chancery, there I need not give him notice of it, Yelverton. 121.

Notice of
a Marriage

If I promise to another man, upon the Marriage of my Son with his Daughter, at the Marriage to give a Hundred pound to my Son; in this case notice must be given, or else how can he pay the Money at the Marriage-day, Yelverton. 121. 122. And yet if one promise me a Hundred pound, if I will marry his Daughter, upon the day of Marriage, or within Ten dayes after upon request; in this case no notice is needful, for it is implied in the request, Bendloes. 159.

Notice of
a proof of
a thing.

If one assume, in Consideration of divers sums paid to him, that if Cooper affirm at his return from beyond Sea, that he received of me Twenty pound; that he will pay me the Twenty pound; in this case, if I sue, I must shew that he did affirm it
such

such a day, year, and place, but before whom he affirmed, it is not material; and I am not bound to give, but he is bound to take notice thereof, the thing being to be done by a stranger, and lying as much in his, as in my knowledge, Croc. 2. 492. 493.

If Three assume to pay, or give, upon request, if the Request be made to one of them, it is good enough, Noys Rep. 135. Request to one, good for more.

If I sell my Horse for Ten pound, and no day of payment, in the Suit for it, it must be laid to be paid cum inde requisit effect. Brownl. and Goddsb. 12. 13.

If one be bound by promise to me, to pay me such Money as I shall lend to I. S. and I do after lend him a Hundred pound, I may bring my Action upon the promise, without giving of notice to him, and he at his peril must take notice of it, Adjudged. Affirmed in Error. P. 6. Jac. Harvelcy and Leighton, B. R. Croc. 2. Car. 34. Jenkinson. Cent. 7. Case 11. 92. And I am not bound to seek unto him to give me notice; but where a duty doth arise upon a private Act of the Plaintiff, there notice must be given of it, before the Action can be brought Jenkenston. Cent. 7. Case 11. Hobb. 51.

If I be to pay Money to one upon his return from Rome into England; he must give me notice of this. So if I sell Tuns of Wood for so much as another shall give before such a day, and name none: So where the Action is to arise upon a secret Act of the Plaintiff, and the breach is so private, that the Defendant by no possibility can know it without notice, Hobb. 51. Jenk. Century. 7. Case 92.

If one promise me, so I will suffer such a one to dwell in my House such a time, that he will save me

me from damage by it, and that for every farthing damage he will give me two pence; in this case I need not in my Action brought, shew how many farthings damage I have sustained, Yelverton. 2 20.

For Collateral Matters Request is needful.

For Collateral Matters, which are not duties, a request is material, and are not like a duty; as for a Debt which is due, and no day of payment expressed, there it shall be alledged to be, when he shall be thereunto requested, generally, Brownl. and Goldsb. 13. 14.

If I sell my Horse for Money, and no day of payment is set, it is due presently, and I must say in my Declaration, Solvend, &c. cum inde requisit esset. Brownl. and Goldsb. 14.

Notice of a Marriage. Part 8.

If one say, marry my Piece, and when I come from London I will give you a Hundred pound; and the Action was brought thus, in Consideration that he would marry, A. promisseth the Plaintiff a Hundred pound after he returned from London, when he was thereunto requested, and for the last words the Action was maintainable, Brownl. and Goldsb. 13. 14.

If one promise me, that if I take such a woman to Wife, he will pay me Twenty pound when he shall be thereto requested after the Marriage; in this case there needs no special Request to be, or be pleaded, Huttons Rep. 2.

Notice.

In cases where it doth rest in the equal knowledge of the parties what is done, there no notice is to be given by the one party to the other what is done, but where it is more in the knowledge of him to whom it is to be done; there notice is to be given. And in case where a penalty is to be recovered for the not doing of the thing, there notice must be given; but where bare damages

Damages onely is to be recovered, there it is not needful, Bulstr. 1. part 12. 13. Also there is a difference, where the thing to be done is executed, and where it is executory; where executed, no notice is to be given, as what Cloth you shall deliver to I. S. I will see you paid for it; in this case he must give notice what Cloth he doth deliver.

Also there is this difference when it rests upon a matter to be done between the parties themselves; there notice is to be given of this to the party who is to make a payment of Money upon an Act to be done by the other, to whom the payment is to be made: otherwise where it is to be done by a stranger, for there he hath taken upon himself to take the notice at his peril, Bulstr. 3. 44.

If one promise to me so much, if I marry such a one, or if he marry my Daughter; in this case no notice is to be given of the Marriage. And so it seems, though part of the Money be to be paid on the Marriage-day, But if it be a Collateral thing that is to be done on the Marriage-day, there notice must be given, Bulstr. 3. 236. 237.

Of a Marriage.

If I be bound to pay another Money on a Bond, and the Obliga, in Consideration that I will pay so much Money such a day to I. S. to his use, in satisfaction of a Debt due from me to him, assume and promise to me, that he will deliver up the Bond when it shall be required; here must be a Request made, and a special Request laid in the Declaration, and the general cum inde requisit will not serve, Bulstr. 3. 297.

Request.
Averment

If one do promise to another Ten pound to build a House, by Croo. Just. he is not to have the Money, untill he hath built the House: But by Cook Just. he is to have his Money before; and if the other

other do not build the House according to his Agreement, he may have an Action against him and so recover damages, Bulstr. 2. 334.

Of a Marriage.

If an Action be brought for payment of a Marriage-portion generally, there is to be a special notice alledged in the Declaration, or it is not good.

If A. promise that B. shall pay such a sum of Money to I. D. upon his Marriage-day; in this case no notice is necessary, but he must pay it at his peril, B. Jones Bulstr. 3. 326. But a Request will supply a notice of a Marriage, or any such like thing, Coe. 8. 89. And so in all cases where notice is to be averred and alledged in the pleading, to warrant the Action, there it is necessary to be made and given to the party. See for this, chap. 14. See more. Croo. 1. 280, 281. Croo. 2. 652. Croo. 1. last publisht. 85. 91. 97. 133. 210. Leonard. pl. 157. 169.

C H A P. V.

Of an Action upon the Case for a Nuisance; and where this Action will lye, or not.

Nuisance,
What.
Sect. 1.
The kinds.

This Action upon the Case doth sometimes arise, and grow in and about a Nuisance, which is said to be where any thing is done, or omitted, by a man upon his own ground, or elsewhere, to the unlawful hurt and annoyance of another that is his Neighbour in his Free-land, or otherwise: and this is either common, when it is, or may be a grievance to many; or special, when it is onely, or especially a hurt to some few: or particular, when it is, or may be a hurt to one particular man, F. N. B. 93. Old N. B. 108. Dyer 195. And

And so it is a Hurt and Damage to him in or about his Dwelling or Habitation; or in his Way, Water, Common, or some other such like Profit or Calment that he hath, the which may be done by Building, Pulling down, Stopping, Diverſion, or some such like alteration. And for this there is a Remedy two Wayes; one by this Action, which is to recover Damages, and to have Judgment, that the Nuisance shall be cast down or abated, as the Case requireth: Or the party grieved may enter and abate the Nuisance himself; but if he abate it himself before Action brought, or hanging the Writ, he cannot afterwards have this Action.

For a Nuisance done to or upon the Land the where man hath in the right of his Wife, he alone may this Action sue, or they may sue together, Bulſtr. 2. 14. Croo. 1. last published 61. Hetleys Rep. 143. And if the do Survive, he shall have the Action alone, not, Croo. 1. 316.

If the owner of the Land stop my way, and then lease it to B. and B. doth not open it, but continue the Nuisance; I may have this Action against him, Trin. 13 Jac. B. R. Bolds Case.

If I be but a Coppelholder, I may have this Action against one that eats up my Common, so that I lose it altogether, or cannot have it so beneficially as I was used to have it, Coe. 9. 112, 231. 11. 117.

If a Nuisance be made on my Land by a stop of water, and causing of it to surround my Ground, or the like, and I sell it, the Vendee may have this Action for the continuance of the Nuisance, or the repetition of it, by turning a Cock new made to drain water, &c. but not for any thing before the Sale, Coe. 5. 101. Croo. 1. last published 402. Dyer 319. 4. Aff. 3. 2 H. 4. 11.

where this Action will lie, and for what, or not.
1. For the persons that sue, and are sued therein.
Husband and Wife.
Copp-holders.

Assigns of Land.
Do

So the Heir for a Nulance begun in his Ancestors time, and now continue in his time, Coo. 5. 101. And the Heir of the Feoffee shall have it against the Feoffee of him who levied it, F.N.B. 111.

A. hath an ancient Right, and B. stops it, by the Erecting of a new House, and then makes a Lease of his new House to C. in this Case no Action can be brought against C. for he did not the wrong, and he may not pull it down, Trin. 13 Jac. B. R. Bolds Case.

If one Erect a House so near to mine, that the Rain descends upon my House from his new House, my Heir after my death may bring the Action for the Nulance done in my time, Adjudged. p. 25 Eliz.

If a Nulance be Erected in my time, and I devise the Land, and it be continued after my time; the Devisee may have the Action, for the continuance is as a new Erecting, Croo. 2. 231.

Some would have this difference to be admitted here, That where the Nulance is all at once, and total, as if I have Pot. water running from a River to my House, and another man in his Ground hath stop it up quite before it come to me, and he Die, or grant away his Land; that in this Case my Heir or Feoffee shall have no remedy for any thing done before their time: But for any Nulance done after, the Heir or Feoffee may have remedy: So that if one Erect a Bank in a River, whereby part of my Land is drowned, and after, I make a Feoffment of the Land to I. S. and then another part is drowned by reason of that Bank; that for this the Feoffee may bring the Action; and so for Non-Feasance, the not repairing of a Bank, &c. Croo. 1. last publisht 402, 403.

One Tenant in Common may have it against
and

Tenants
in Com-
mon.

another Tenant in Common for a Nuisance done amongst them: And so one may have it against the other for breaking a Gutter between their Houses; or for making of a Lime-pit in the Land in Common between them, by which the Water surrounds his House, 2 H. 5. pl. 12. 13 H. 7. 26. Yelverton 161. And yet it is said, that such a Tenant may not have it against another Tenant that hurts him in his Common by Digging of Pits, Noys Rep. 84.

Tenants in Common must joyn in an Action for a Nuisance done upon their Land; as for the taking away of a Pier-stone from off their Land, Noys Rep. 137. 1. Lib. Intr. 9. C. sect. 1. Crood. 2. 231.

It may lie against Church-wardens, for not Repairing of a Gutter, by which a Nuisance is, or may be done to my House, Lib. Intr. 10. D. sect. 1. Against Church-wardens.

It may lie against a Vicar, that disturbeth me in my Burial in an Isle of the Church, where I do prescribe to have right so to do, Lib. Intr. 8. B. sect. 7. Against a Vicar.

If two conspire to do an unlawful Act in a Case for which this Action is given, and one of them only do prosecute it, in the Execution of it, yet I may have this Action against them both. Lanes Rep. 49. See for this, chap. 15. sect. 2. case 4 9. 17. 19.

That if a man in his own Ground, levie that which is a Nuisance to my Ground, I may have this Action, or some other Action; but not Trespass Quare vi & armis, as where it is done in mine own Ground, 31 Ed. 3. Action, &c. 3. 2. For the nature of the Action. Sect. 2.

That for the not making, or amending of a Ditch, &c. this is the most proper Remedy. But for the breaking of a Bridge, or stopping of a Water

ter, whereby I am damnified, there perhaps I may have an Assize of Nuisance, or some other Remedy also, 11 H. 4. 82. 14 H. 8. 38.

That where I have the Fee-simple of a House and Land, to which I have Common Appurtenant, and a Way to it, and one that is Tenant of the Land over which I have my Way, hath in part stopp'd it; I may have this Action, and this is the proper Action: So also, if the Nuisance be by a Stranger; or if the Tenant that stopp'd it have but a Lease for Years, and I have but a Lease for Years in that to which the Way doth belong, albeit it be totally stopp'd. But if I have a Freehold in that to which it doth belong, and he that hath stopp'd it, the Freehold of the place wherein he hath stopp'd it, and it be a total stopping; there I may as properly have remedy by some other Action, as by this, and it is my choice to have recourse to the one, or the other remedy, Croo. 1. last published 466. 845. Dyer 250. 12 H. 7. 30. 2 H. 4. 11. 27 H. 8. 31. 27 H. 6. 27.

So that for Nuisances in general, and especially for such Nuisances as are to a mans Way, Watercourse; Conduit, Common of Pasture, or the like; there are in some Cases more Remedies than one: For in some Cases, for the Redress of it, there lies an Assize of Nuisance, and in other Cases a Quod permittat, and other Remedies. And this Regularly seems to be the Law herein, That for special Nuisances to one man more than another, and to one man in special, if he be a Freeholder of the thing to which the Way, Water, &c. whereabout the Nuisance is, and the stop be of the whole, or of the greatest part of the Water, &c. in that Case the most proper Remedy is by Assize,

Use, Quod permittat, or some other Writ; and yet therein also he may have this Action of the Case if he will, Dyer 248 250. Leonards Rep. 247. 10 H. 7 21.

* But if the Party to whom the Nuisance is done, have only a Lease for Years, or some Coppyhold Estate in the thing to which that wherein the Nuisance is doth belong, albeit the Nuisance be total: Or if he have the Freehold of the thing to which, &c. and the Nuisance be only partial; that in these Cases the only proper Remedy is by this Special Action of the Case; and where I have the Freehold, I may have the one or other Remedy Stiles Rep. 164. Co. 5. 73. 101. 9. 113. F. N. B. 18. a. Godb. Rep. 213. Leonards Rep pl 333. Dyer 218. 250. Cro. 1 last publisht 402. 467 845. Cro. 2. 673. F. N. B. 176. 21 Ed. 3. 6. 34 H. 6. 4. 21 H 7. 29. Dyer 320.

And thus it lieth in the Cases hereafter following for particular Nuisances.

If a man set up a House upon a new Foundation, so near to my Ancient House, that thereby he stops up my Windows, and takes away my Light, the Air, and Prospect; I may have this Action. For a man may not in London, or else where, enlarge his House in Breadth or Length, to stop up his Neighbours Light, but upon an ancient Foundation he may Build it as high as he will, Co. 9. 56. New B. of Entries 19.

But if the Building be upon an old Foundation, and where there was a House before, no Action will lie for this, Cujus est solum ejus est usque ad coelum, New B. of Entries. fol. 19, 20. Co. 9. 10. 9. 55. But otherwise if a man shall by such a Building, or by the setting up of a Wood-pile,

About a
House and
distur-
bance
therein.

for the like means, disturb me in my Light, I have to my Antient House; I may have this Action against him, Hill 9. Jac. B. R. Hughes Case. Mich. 9 Jac. Ward and Chestners, B. R. 7 Ed. 3. 262. Action, &c. 11. 22 H. 6. 15.

If I have a Building beneath, and another man a Building above me, and I suffer mine to decay so as to hazard his, or he suffer his to decay so as to hazard mine; each of us may have this Action against the other, Old B. of Entries, fol. 3. Kelw. 48.

If a man doth Over-Build my House, so that his House Eves do drop upon my House, and cause it to Perish, or trouble my Dwelling; I may have this Action, 22 H. 6. 14. Brownl. and Goldsb. 4. See chap. 15. sect. 2. case 2. And yet in Trin. 42. Eliz. between Nicholson and Bradshaw. The Lessee for Years of a Shop, brought an Action against one that was Tenant at Will of a Bitchin over the Shop; for suffering it to decay, and to spoil the Wares of his Shop, and after a Judgment for the Plaintiff it was Reversed, See Brownl. 1. part 4. Croo. 22 H. 7. 98.

Yet if a man have a House very neer mine, and suffer it to decay, and fall, and with the fall thereof to throw down some of mine, it seems I may have this Action for this, Coo. upon Lit. 56. Coo. 5. 73. 107.

If one House be Built hanging over another wrongfully, and after they come both into one hand, the wrong is now Purged, so that if after they come into several hands, neither Partie is to complain of the wrong before, Hobb. 173.

The Erecting of a Dye-House, Tan-House, Pigsty, House of Office, Brew-House, or Chimney, or of a Chandler, or Butchers Shop, or Lime-

Lime-kiln, may be a Nuisance to a Neighbourhood, by which, if I have any considerable offence in the Smell, to my Health, or by the Smoke, to our Bodies, that live in the House, or Trees of the Garden, or Yard, I may have this Action for my Relief therein, Pasche 5. Jac. B. R. But in these Cases the thing Created must be used. And so if one set up a Pigsty under my House, and keep Pigs in it, or a House of Office, Lime-kiln, or Brew-House, and use it so nêr to my House, that the Smell thereof both Annoy me, and hazard my Health, or the Smoke of the Chimney, Brew-House, or Lime-kiln hurt my Trees, or lay Dung or Carrion so nêr to my House, that I am Annoyed by it; in these Cases, and for these Wrongs, I may have this Remedy, Coo. 5. 73. 101, 108. Coo. 9. 54. Mich. 8 Jac. Aldred's Case.

So the Building of a Brew-House, or the keeping of a Chandlers, or Butchers Shop, so nêr my House, in a place Inconvenient, to the offence of me in my Garden, or House, may be such a Nuisance, for which I may have this Action, Trin. 13 Car. 1. B. R. New Book of Entries. fol. 18. But if such a man shall set up his Trade by me, though this be offensive to me, by the laying of stinking Heaps at his door, and the like; I can have no Action for this, unless it be very great, and much offensive, By Cook and Warburton, Justices. Mich. 8 Jac. Croo. 1. 367. 13 H. 7. 26.

If a man shall Build, or set up a Wall against the Window, or Light of my House; I may have this Action against him, Croo. 9. 54. 5. 108. And this, albeit he Build upon his own Ground: So if he set up a Wood-pile upon his own Ground, to stop my Ancient Lights; but if it prevent my

prospect only, no Action will lie for this, Croo. 9. 54. But if Two men be Owners of two parcels of Land adjoining, and one of them Build a House on his Land, and make Windows and Lights looking into the others Lands, and this continueth Twenty or Forty Years, the other may Build, or lay any thing upon his own Land, and stop them, Croo. 1. last publisht 118. 829. See more Yelverton 225. 210. 215. Bulstr 1. part 116. chap.

Customs
or Precri-
ption,
Prospect.
About a
way, and
a distur-
bance
therein.
Sect. 4.

15 Sect. 2. case 7, 8, 10, 14. 36. 23. 33.

Now will any Customs or Prescription bear a man out, or excuse him for such a Nuisance. But for the taking away of, or my hindrance in my prospect of my House only, no Action will lie, Croo. 8. 57.

If I have had, time out of mind, a private way to my House, Ground, Common, or other place, by Customs, Prescription, Feoffment, or other wise, and another man stop, or mar it in all, or in part; I may have this Action for my Remedy. And for the opening hereof, take these things,

If a man raise a Mill, or a Dike cross my way, one prescribes that he, and all those, &c. have had a Way from his House in D. over Green-Acre in S. and over Black-Acre, unto such a place in P. and that the Defendant had stopped his way in S. Croo. 1. last publisht 427. 619.

So one seized on a House in Fee, of a House in St. Martins in the Fields; and that he, and all those that have had the said House, have had a foot-way from the said House, to the River of Thames, in the same Parish, and that he so seized, let a Lease of it to the Plaintiff for Years, and that the Defendant had Erected a Gate cross the said way, &c. and it was Adjudged for the Plaintiff, Croo. 2. 673.

The.

The Plaintiff declared, that he was seized of a Messuage, &c. and that he, and his Ancestors, and those whose Estate, &c. have had a way from his Messuage to such a place for him, his Servants, and Farmers as well on Foot, as with Carts, &c. and Retrorsum, and that the Defendant had stoppt it, &c. Yelverton 159.

He that claims such a way, must prescribe for it A quo termino ad quem, for he may not go over my Ground, but the right place, Hobb. 254.

If the Inhabitants of a Parish have, time out of mind, a Way to their Common, and they be now disturbed in it, they may have this Action, Croo. 1. last publisht 180.

If a Way be in an ancient City between two Streets, that all the City have used, time out of mind, and one make a Ditch, and Erect a Pale Cross this way, no Action will lie for this, but it shall be punished in a Writ, Croo. 1. last publisht 664.

If A. have a Way over the Close of H. sows the Close, and leaves a way in another part of the Close, yet T. may justifie to go where the ancient way is, and is not bound to go in the new unplow'd way, Adjudged. Noys Rep. 128.

If I declare that I am seized in Fee of Black-Acre, and that I have a way to it by such and such a Gate, and that the Defendant hath fastened the Gate with a Lock, &c. this Action will lie, Noys Rep. 112. So if he set up a Gate where none was before, Godb. Rep. pl. 67.

One declares, that he is an Inhabitant of the Parish of A. hath, time out of mind, had a Common way for Foot and Horse to go and Ride from A. to the Parish Church there on Lords and Festival

vayes, and other convenient times, to hear Divine Service, and to carry the Bodies of Persons Dying in the Parish, to the Church, to be Buried there, and shewed all the way, and through which Closes they were to go, and set forth the disturbance to be by Digging of a Ditch in one of the said Grounds, Hutton. 27.

One declared, that he ought to have a way over the Defendants Land, for his Carriages at any time when he should have occasion to use the same, and that the Defendant stopped the same by the making of a Hedge, Bulstr. 2. part 121.

If I have the Fee-simple of a House and Land in D. whereto I have Common Appurtenant in such a place, and have, time out of mind, such a way to it, and it be totally stopp'd, that I cannot come to my Common; I may have this Action, or an Assize of Right at my choice, especially where the stopping is made by one that is Tenant for Years, or by a Stranger that hath nothing to do with the Land, Croo. 1. last publisht 845. Adjudged. Noys Rep. 37.

If I be seized of a House and Meadow in S. &c. and by T. W. and all those whose Estate, &c. from time, &c. for themselves, their Farmers and Tenants have had a way to carry Hay out of the said Meadow, to the said House over a certain Meadow of the Defendants in S. and so describe the Passage all along; this Action will lie if I be disturbed in it, Bendl. 160. And how a prescription may be made for a way, See Stiles Rep. 300, 301. 371.

If I have an Antient House in A. and an Antient Cross-way by Prescription in, by and through a certain Way in Sale in the County aforesaid unto

unto such a Close in D. in the said County, and he doth stop it up by making of a Hedge in the Close of D. &c. this is actionable, Noys Rep. 9. See more. Noys Rep. 120. Bullstr. 1. part 47. Godb. Rep. 4. chap. 15. sect. 2. calc 6. 12, 18, 20, 25, 27, 28, 30, 31, 39.

If a Commoner be ousted of, or disturbed in his antient Common, by mowing of it, planting of Cones upon it, plowing, or inclosure of it, or the like; he may in some cases have this Action. Goldsb. and Brownl. 17. But for the opening hereof, take these cases.

About
Common
of Pasture
or Estro-
vers, and a
distur-
bance
therein.
Sect. 5.

If I am a Coppy-holder, and am to have Common in the Lords waste for two Shæp, for every Acre of Arable Land, and the Lord dig holes, and put Cones there, that I cannot have my Common, as I have been used to have it; I may have this Action against the Lord, Croo. 1. last publisht. 390.

If I have Common in anothers ground, and he doth inclose it, or make a fish-pool in it, that I cannot have my Common; this Action will lye, Hetleys Rep. 143. And so generally in all cases where I have an Ancient Common of Pasture by custome, or prescription, and any one shall by inclosure, surcharge, trespass of his Cattle, or the like means, eat up, or spoil the grasse so much, that there is not sufficient left for the feeding of my Cattle, as formerly, and I cannot have the profit of it as I have had; I may have this Action: But if the Trespass be so small, that I have notwithstanding feeding sufficient for my Cattle; no Action will lye for this, Croo. 1. 355. Coe. 9. 111. 5. 76. Instit. 1. part 56. Croo. 1. last publisht. Coe. 4. 39. 8. 79.

If I have Estovers in the Woods of another by
privi

prescription, and the owner of the Wood cut it down all, and doth not leave sufficient for me; I may have remedy by this Action, Co. 9. 112.

If one Commoner surcharge the Common, that the rest cannot have theirs as they have been used to have it; some say the rest of the Commoners may have this Action against him, Noys Rep. 30. Stiles Rep. 164.

If one dig Pits, or make Trenches where my Common is, that my Cattle go in danger of their lives thereby; I may have this Action, Noys Rep. 84. A Commoner brought his Action against one for digging Clay, and laying it upon the Common, and for carrying the same over the Common &c. by which, &c. Godb. Rep. pl. 437. 442.

A Commoner brought an Action upon the case against a stranger for his beasts coming in, and feeding upon the Common, Brownl. 2 part 55. By Cook. Walmsly and Warburton, the Action will lye, Foster against it, Hill. 8. Jac. Co. B.

So for erecting of Cottages upon the Common, Godb. Rep. pl. 350.

If I have Land in D. and by reason thereof after Harvest severed Common in Twenty Acres of Land adjoining to it every year, and the owner plow up this Twenty Acres; it seems I may have this Action, Cro. 1. last publisht. 198, 199. and am not put to an Assize, Dyer. 258. 2 H 411. See Leonards Rep. pl. 249. chap. 15. sect. 2. case 24. 38, 39.

About water, and a watering-course, and a disturbance therein. If I have a water, that time out of mind, hath come above, or under ground to my House, or ground, be it in, or out of a Conduit, or Pipe, and the same is stoppt, diverted, or corrupted, in part, or in whole; I may have this Action against him that doth

doth it, New B. Entries. 18. Co. 5. 73. F. N. B. 184. Croo. 1. 359.

And yet if such a water be common to every body, or to every body in such a Parish, and such a Nuisance be; not this Action, but some other Remedy must be had: But if any special damage come to me thereby, as if one shall pollute such a water, and I happen to bring my Cattle thereto to water, and they dye; I may perhaps have this Action for the loss, Croo. 2. 263. Croo. 5. 103. 9. 113. See Co. 5. 73. 22 H. 6. 46. and chap. 12.

If I have a Mill, and a water running to it, time out of mind, and another turn the water by digging of a Trench, or otherwise, that I cannot grind as formerly I did, I may have remedy by this Action; Croo. 2. 263. See chap. 15. sect. 2. case 1. 13.

If I have an Acre of Land adjoining to yours, and it is drowned, I may Trench it, or make a Sluice to draw it out, although the next be drowned by it, for he may Trench it, and make a Sluice also, 12 H. 8. 3.

If one have anciently Ponds, which are replenished by Channels out of a River, he may not change the Channels, if any prejudice accrue to another by it, Herleys Rep. 34. See Bulstr. 3. 79. 339.

If one have ground adjoining to a little River, and another throw in stones into the River, and stop up the water, that it doth overflow and hurt my Meadow; I may have this Action against him, Croo. 1. last publisht. 191. So if one levy a Dam upon the River, whereby the water overflows my ground; I may have this Action, Croo. 1. last publisht. 402. See chap. 15. sect. 2. case 15. 17, 22. 26, 32, 34, 35, 37.

Turning
my water
from my
Mill.

If I have an ancient Mill, and an ancient Water-course to maintain it, and any man shall divert it, that I cannot have the use of it to my Mill as formerly, to maintain a new Mill he hath set up, or for any other cause; I may have this Action against him, Stiles Rep. 370. 12 H. 4. 47. 21 H. 7. 30. Dyer. 195. 248. Co. 4. 86.

Damming
up a River
or ditch,
to sur-
round my
Land.

If one do by any means stop or dam up the River higher than formerly, so that my ground is dried by it; I may have this Action against him for it. Quare exaltavit stagnum, or quod crexit stagnum, &c. Dyer. 248. Br. Nuisance 9. Jenkins Century. 6. Case 65. Godb. Rep. pl. 70.

If one dam up a Ditch, and the water in it so much thereby, that he drown my Coyn, I may have this Action, Regist. Orig. 95. B. 97. a.

About a
Ditch.

This Action will lye for stopping of a Ditch, or Water-course, and turning it out of his ancient course, by which my Land is drowned, F. N. B. 88. E. 89. M. 39 H. 6. 32. 11 H. 4. 82. 14 H. 8. 31. New B. of Entries, 18. So for not scouring of a Ditch, by which my Land is overflown, Godb. Rep. pl. 68. Regist. Orig. 101. A. 7 H. 4. 31. 12 H. 4. 6. 29 Ed. 3. 32. F. N. B. 93. G.

About a
Pit, or
Watering-
place.

If I have a Pit, or watering-place by prescription, for mine own use, albeit it be not in Common, and one disturb me in it; I may have this Action, 21 H. 7. 35. No. Lib. Intr. 18. D. sect. 15.

So if the Inhabitants of a Parish have a watering-place amongst us by prescription, and (I, being one of the Parish) we be disturbed in it, each of us may have this Action against him that maketh the disturbance, Finches Ley. 187. 27 H. 8. 27.

If one cut down the Bank of a River, whereby my Meadow is drowned; I may have this Action against

against him, Croo. 1. last publisht. 747. Hetleys Rep. 118. See chap. 15. sect. 2. case 35.

If there be a charge upon any man by reason of his Tenure of a House, or Land, to repair any Bank, Bridge, Gutter, private way, or the like, and he doth not keep it repaired, whereby I have any special prejudice, I may have remedy by this Action, Old B. of Entries, 10. Action, &c. 22. 2 H. 5 3. Or if one be so bound to repair the Sea-banks, or Sea-bozn Banks, and neglect it, and hereby my ground is drowned, or I have any special damage; I may have this Action. But if in this case the damage happen by some extraordinary accident, as inundation, or the like; no Action will lye for this, Croo. 10. 139. 29 Ed. 3. 32. 12 H. 4 7. F. N. B. 93. G. Croo. 1. last publisht. 402, 403. See chap. 15. sect. 2. case 19. But if a man comes to such a thing, and it is so ruinous and decayed when he comes first to it; it seems in this case he is not to be charged with it, Croo. 1. last publisht. 520.

And if one break the Sea, or a River Bank, and hereby my Land is drowned; I may have this Action against him, Croo. 1. last publisht. 402, 403. F. N. B. 86. F. 89. G. 29 Ed. 3. 32.

If one have a House, or Room over my House, or Room, and suffer it to decay, and fall upon my House and hurt it; I may have this Action: And so perhaps I may if he put extraordinary weight upon the Room above, and so break it down upon me; I may have this Action, Croo. 1. last publisht 285. 502.

This Nuisance may be by Coierp, or Conp-burrows; And for this take these things,

1. That if the Tenant's have Common in the Lords waste, and the Lord shall have, or hath a Warren in it, or hath no Warren in it, and he hath,

Cutting the Bank of a River, whereby, About Reparations of a Bank, of a Bridge, of a Gutter, of a Way. Sect. 6.

About Conceys & a Warren.

Free War-
ren.

or shall have so many Coneyes, and dig so many Burrows in it, that I that am a Tenant cannot have the profit of my Common, as formerly I have had it; in this case I may have this Action against him, Croo. 1. last publisht. 390. Yelverton 143. Winch. 16. Yelverton. 104.

2. This Action will not lye against another man for making Cony-Burrows, and planting of Conyes in several grounds of his own (whether he have, or have not a free Warren there) to the Trespas of the Neighbours, Croo. 5. 104. Rowlings case.

3. That albeit Commoners, or others be oppressed by Coneyes, and a Coniger adjacent, yet he may not go into the Coniger, and kill the Coneyes there, or destroy them, as we do ffores, and vermine. But if the surcharge be by the Lord upon his Tenants in his own waste; each of them may have his Action against him, but not kill his Conays there: So for Fish, if there be a Fish-pond, they cannot destroy the Fish: Nor may I, where my Neighbour in his adjacent ground doth keep such a store of Coneyes, as that I am Trespas'd by them, go into his own ground, and kill them; but I may kill them when they come upon my own ground, Yelverton. 104. Owens Rep. 114. Adjudged. H. 9. Jac. B. R. Croo. 1. 277. last publisht. 547. An Action was brought, and Judgement had against one, for that his Coneyes came into his Corn, and the Judgement was reversed in a writ of Error, for no man may have an Action against me for my Coneyes, no more than for my Pigeons coming in to his Corn, Croo. 1. 282. 237.

4. That this Action will not lye against another man for the purchasing, and setting up of a new Warren,

Warren, albeit it be to the prejudice of me, that have an old Warren adjoyning to it, Croo. 5. 104. Bowllstons case.

5. That if the Lord build a Lodge, make a Co-niger, and thereby oppresse his Tenants, and his Heir continue, or increase the Nuisance; the Tenants may have this Action against the Heir, as they might have had against the Father or Ancestors, Yelverton. 144. Winch. 16. Gwen. 114.

6. If one put Cats in my Warren amongst my Coneyes, it is said, I may have this Action for this wrong, M. 2 Jac. B. R. by two Justices. Old B. of Entries. 13. See more of this, chap. 15. sect. 2. case 21. 24.

There are other wrongs that go under the name of Nuisances, for relief, against which this Action upon the case is given.

This Action will lye for me against him that shall set up a new Ferry to the prejudice of me in my antient Ferry in the place, 22 H. 6. 14.

About a
Ferry,
Sect. 7.

So it will lye against him that shall threaten my Ferry-man, that he dare not carry his passengers as formerly he hath done; or that shall threaten the passengers, that they dare not come as formerly they have done, if by this I suffer any damage, 22 H. 6. 17. pl. 32.

This Action will lye for me against him that shall disturb me in my Foldage, to which I have right: As where I am seized in Fee of a Paunoz, and I, and my Ancestors, time out of mind, have had a Fold-course for our Sheep, not exceeding Thre hundred in seventy Acres of Land in T. every year from Fourteen dayes after the Cozn is carried away, to continue till Lady-day within the Land, and sown again; or from such to such a day,

About a
Foldage,
or Field-
course.

About a
walk in a
Forrest.

or the like, and I am disturbed in this: And a man may not by a prescription to a power to inclose, be deprived of this, Croo. 1. 312. New B. of Entries 14. D. secr. 12. Croo. 5. 76. 13 H. 7. 26. So if I be Lord of a Mannor, and have, time out of mind, had the free soleage of the Beasts of my Tenants to manure my Land, and be interrupted in it; I may have this Action, Leonards Rep. pl. 14. 199. Huttons Rep. 102. 103.

About a
Fishing.

This Action will lye for me against him that shall disturb me in my walk, in a Forrest, which I have right unto by custome, or prescription, Croo. 5. 76. New B. of Entries. 9. 11. 14. 13 H. 7. 26. Croo. 1. part of Inst. 56.

About a
Mill.
Sect. 8.

If one erect a Dye-house, and pollson the water, wherein I have fishing, so that the fish is destroyed; I may have this Action, Croo. 9. 59.

If I have had a Mill, time out of mind, on a River, and another man shall set up a new Mill by my Mill, whereby he takes away my custome; no Action will lye for this. And yet if by the custom of the place the Lord of the Mannor hath such an ancient Mill, and therein the grinding of all the Grist of his Tenants, and where none ever had any such Mill but the Lord, there perhaps for this the Lord may have this Action. But in the first case, if by the setting up of the new Mill he take away part of my water, that it comes not so freely to me as formerly it did, or it doth otherwise damnishe me; I may have this Action against him for this. But otherwise any man that will, may erect a new Mill, if he do not take away the water from other Mills, Leonards Rep. pl. 368. Croo. 1. part 133. Broo. chap. 36. 11 H. 4. 45. 47. 22 H. 6. 14 Old B. of Entries. 10. Croo. 1. last publisht. 112. 113.

If any one shall break down the Banks of Rivers of my Mill-pond, so that this water is diverted, and comes not as formerly to my Mill; I may have this Action, Gold B. of Entries. 10.

For a Custome that Tenants shall grind at the Lords Mill, See Bulstr. 2. 195.

If I have, by Custome or Prescription, the single Trade of a Bake-house for a whole Town, and another shall set up a Bake-house there, and take away my Trade; in this Case I may have this Action against him, Co. 8. 125. Action, &c. Bro. 52. And therefore if I be Lord of a Mannor, and, time out of mind, have had a Bake-house in my Mannor, and a Baker there to Bake white Bread, and Whitebread for the Inhabitants, Strangers and Pauengers, and another set up a Bake-house there, and by this I lose my Custome; I may have this Action against him, Cro. 1. last published 203. See Leonards Rep. pl. 199. See chap. 15. sect. 2. case 16.

This Action will lie against him that shall hinder, Disturb, or Prejudice me in the taking, or use of my Franchise, or Liberty: As where I have the Execution and Return of Process in a Hundred, or other Place, and another man, without Authority, shall take upon him to do it there, F.N.B. 95.B. Writ. Regist. Orig. 103, 104. 5 Ed. 3. 150. pl. 20.

So where one shall take away my Estray out of my Mannor, and out of my Possession, after I have once seized upon him, 13 Ed. 3. Writ, &c. 674. But if taken before seizure, the Action will not lie, 31 Ed. 3. Writ. 133.

So where one shall Disturb me in the keeping of my Court Leet, or other Court, Fitz. fol. 94. Lecc. 19 R. 2. Action, &c. 52. Or shall Distrain one

About a Bake-house.

For disturbing me in my Franchise About the return of Writs.

About an Estray.

to come to his Lette, that doth owe his Suit to my Lette, Old B. of Entries. 5. New B. of Entries. 10. 11 H. 4. 64.

About a
Market or
Fair.

So this Action will lie against him that shall set up a Market, or Fair, without Authority, to Prejudice me in my Market, or Fair, 22 H. 6. 14. 11 H. 4. 74. Mich. 41. 42 Eliz. Coe. B. Maines and the City of London. But some have said, that the Remedy in this Case must be by a Quod permittat, and not by this Action, 41 Ed. 3. 24.

About a
Mill.

Or shall Disturb me in the Keeping and Holding of my Fair, or Market, 16 Ed. 2. Action, &c. 47. 11 H. 4. 64. Old B. of Entries. 5. New B. of Entries. 10. Or shall Disturb my Customers that would come to my Fair, or Market, or my Mill, 11 H. 4. 45. 47. 41 Ed. 3. 24. 29 Ed. 3. 18. 9 H. 6. 45. F. N. B. 91. G.

About the
taking of
Toll.

So for the Disturbance of me, or my Servant, in my taking of Toll in my Fair, or Market; it seems I may have this Action, 9 H. 6. 45. 21 H. 7. 16. Count 18.

So against him that shall Sell in another place out of the Fair, or Market, Regist. Orig. 107. A. B.

If the Bayliff of a Hundred, be by Prescription to have of every Brewer in the Hundred, as belonging to his Office, three Gallons of the best Ale for Seven Pence, and he be Disturbed in it, it seems he may have this Action, Trin. 19 R. 2. Action, &c. 51. See 48 Ed. 3. 17. 43 Ed. 3. 29.

About a
School
set up.
Sect. 5.

This Action will not lie for me that have a School in a Town, against him that shall set up another School by me, albeit I suffer Loss by it, 11 H. 4. 47. 22 H. 6. 14. 11 H. 6. 64. And albeit the first

First School do belong to a Corporation, which doth Collate Schollars to it; yet no Action will lie for it, for it is *Damnum sine injuria*, Action, &c. 28;

If a School-Master keep School so nêr to my Study, that am a Lawyer, that he doth Disturb me; no Action will lie for this, Mich. 8. Car. Curia.

This Action will not lie for me against another, About a that shall set up a New Pigeon, or Dove-house Dove-nêr to mine that is Antient, to the Prejudice of house. me in my Dove-house, Coo. 5. 194. And yet if any man but the Lord of a Mannor shall Erect a new Dove-house; this may be punishable in a Writ, Coo. 5. Rowllston's Case.

If I have an Office of Profit, and another Disturb me about it, that I cannot take the Profit of Office About an it; I may have this Action in some Cases for my it; I may have this Action in some Cases for my Remedy herein, 6 Ed. 4. 9. Broo. 94. Coo. 9. 50. F. N. B. 94. Croo. 1. last publiht 548. Popham. Rep. 141.

If I and my Ancestors, time out of mind, have About an had an Isle in a Church, for Seats, and the Use of Isle in a such as Die in my House, as Appendant Church. to my House, and the Parson, Vicar, or any Stranger shall Disturb me therein; I may have this Action, New B. of Entries 9.

But for Common and Publick Nuisances done Common in the Publick wayes, as by casting of Garbage, and pub- Dung, Intralls of Beasts, or the like Filth, by lick Nuisances. digging of Pits within it, by turning of waters in it, or by not repairing of them, and the like: And for such things done therein, or in the Common Rivers, in or nêr any City, Burrow, or Town, the proper place to have the same Redress'd, is in the Law, Day, Court, or in the Sessions, by pre-

sentment, or Indictment, or some other way. And
 per ff. by occasion of such a Publick Bulance, any
 one man hap to have any Special Damage above
 another man. As if by digging of a Pitt, or lay-
 ing of a Block in the High-way, he or his Horse is
 hurt; for this he may have this Action, Croo. 2. 446.
 Croo. 1. last publisht 664. Stiles Rep. 335, Croo. 5.
 103. Croo. 5. 72. 103. 9. 113.

See more, Popham 166, 167, 168. Bulstr. 1. part 47.
 chap. 15. sect. 2. case 11. 20. chap. 15. sect. 6. case 29.

C H A P. VI.

Of an Action upon the Case for Deceit, and where
 an Action will lie for this, or not.

Deceit, RO
 what.
 Sect. 1.

This Action upon the Case doth sometimes arise,
 and grow upon, in, or about some matter
 of Deceit; and for this, these things are to be
 known, that Deceit is said to be a *Writ*, which
 is sometimes Original, sometimes Judicial; and
 where it is Original, it is said to lie where any
 Deceit is done by one man to another; and there
 it is said to be Judicial, where upon some *Writ* di-
 rected to the Sheriff, he shall make a false Return
 of it; as to the last of these it lies, in these Cases
 following; where a Scire Facias, or other *Writ*,
 Issueth out upon any Record against any man, and
 the Sheriff, or any other Officer Returneth that
 upon which is not true, then the Party grieved
 shall have this *Writ* against him, and them that
 shall do this Wrong; and in this Action there must
 alwayes be Deceit and Damage both, for if either
 of them be wanting, no Action will lie, but if both
 be,

he, in this Case it will lie, Terms of the Law. A. 51. F. N. B. 95. And so it lieth in the Cases hereafter following.

If a man make an Attorney in an Action real brought against him, and it is after by Coven agreed between the Defendant and the Attorney, that the Attorney shall make default, who doth so, and hereby the Tenant loseth his Land: in this Case he may have this Writ against the Attorney.

Against an Attorney
Against a
Against a
Against a

If a man bring an Action of Trespass against two others, and the Plaintiff and Attorney by Deceit, agreed between them, and cause two Strangers, not party to the Suit, to come into the Court, and say, that they are the two Defendants named in the Writ, and that they appoint the same man to be their Attorney, in that Suit: And the Attorney, as Attorney to the true Defendant, plead no Issue, and after suffer the Issue to pass by his default, whereby the Plaintiff recovereth, in this Case the true Defendants may have this Writ against the Attorney that appeared for them, and recover their Damages, F. N. B. 95. Coq. 6.9.

In a Case, where Summons is necessary in an Action, and the Sheriff or Officer shall return it is done, where it is not done, or make any other false Return; this Action will lie for this Deceit against the Sheriff, or other Officers, Summoners, by the Defendant in the Action.

Against a
Sheriff.

If my Councello, or Attorney, or whom I trust in my Cause, shall discover the secrets thereof to my Adversary in the cause, whereby I have Damage, I may have this Action, 11 H. 6. 18. Action, &c. 108. But it will not lie against another man that may pretend to be a friend, &c. for this,

Against a
Councel-
lor or At-
torney.

If my Councellor, or Attorney, retained and trusted by me in a cause, shall against, or besides his office, use any Deceit, or do any thing against my trust in him, by which I shall suffer Damage, I may have this Action against him, F. N. B. 95.

Against a
Sheriff or
other Of-
ficer.

If any Sheriff, or other Officer of any Court, that hath to do any thing there for me, shall do it Deceitfully, and falsly, whereby I have any special Damage; I may have this Action against him, F. N. B. 95. Croo. 6. 9. 20 H. 6. 2. 15 H. 7. 14. Croo. 1. last published 175. Dyer 355. 11 H. 6. 18. Croo. 9. 32.

If a Sheriff, or any other such like Officer, or minister of Justice, refuse to make a return of his Writ, as by Law he ought to do, or make a false Return of his Writ, or the like, in any Suit of mine, by which I suffer any special Damage; I may have this Action against him, Croo. upon Lit. 259. Croo. 6. 9. 32. Dyer 353. F. N. B. 97. 98. March. Rep. pl. 189. F. N. B. 95. But if a Judgment be had by my default, being all the while in Prison, and I have been Summoned according to Law; I can have no Action for this, Croo. upon Lit. 259.

Against a
by other
man.

The Principal having found Bail after Judgment against him, renders himself to Prison in discharge of his Bail, the Defendant knowing this, doth maliciously procure a Capias ad satisfaciendum against the Bail, and thereby the Bail is Imprisoned; he may have this Action against him, Judged, affirmed in Error. Croo. 1. 666. Jenk. Century. 8. case 22. After Judgment in Debt against B. upon a Capias Uelegatum against him, delivered to the Sheriff of Dale, in Com. Essex, and he shewed B. to him, and required him to Execute the Writ upon B. yet he did it not, but return

returned a non est inventus to the Court of Common Pleas; the King and A. may have this Action against the Sheriff for this Deceit, Croo. 2. 532 Jenk. Century. 8. 64. Judged, affirmed in Error.

If one of the Mainperners in a Suit in London, where there are two sufficient Mainperners, shall Fraudulently procure a Habeas Corpus out of the Exchequer, to remove the Cause out of the Court in London thither, and there procure and hire two beggerly Fellows, whom he knows to be Insufficient (by Mistake of information to the Court, that they were sufficient) for Twenty Shillings to be Bail there, and so to have the Mainperners in London (who were by the Custome to answer the Debt, if the Principal fast) discharged of their Bail there, and the Plaintiff in the first Suit get a Procedendo, and Judgment, and Execution: But the Plaintiff is by this Practice delayed and prejudiced, the Defendant being gone beyond Sea, &c. he may have this Action for his Remedy, Croo. last published 714.

If any shall as Executor or Administrator to another, to whom indeed he is no Executor, Sile out a Statute, or defend a Suit, and therein do any thing to the prejudice of the true Executor; this Action lies for the true Executor or Administrator against him, 2 R. 3. 8. F. N. B. 98. 9 Ed. 4. 13. 96. So if a Writ be brought against two as Executors, and one of them is no Executor, and he shall confess the Action, the other that is damned hereby, may have this Action against him. And so if such a Counterfeit Executor or Administrator shall get a Statute made to the Testator, and shew the Testament proved, or Letters of Administration, and so get out Writs, and hath Ex-

Against a Mainpernor.

Against a counterfeit Executor.

cution; so if he shall do it in the life time of the Promisee, and suppose him to be dead, 2 R. 3. 8.

For personating another.

If another shall come into the Court in my Name, and as in my Person, without my leave and privity, and there shall acknowledge a Judgment, enter into Bail, Levie a Fine to the King, or appear for me there, and let Judgment go against me, or sue another, that I have cause to sue, and let Judgment go against me by Non-Suit, or do any thing in my Name, without warrant from me, and I have any damage by it; I may have this Action against him. F. N. B. 96, 97, 100. 9 H. 6. 44. March. Rep. pl. 76.

Deceit in Contracts. Sect. 2.

If one grant away a Rent-Charge upon his Land, and then sell the Land to me, 20 H. 6. 34. Or if one first sell his Land to another, and then sell it to me; I may have this Action against him, 20 H. 6. 34. N. B. 9. 8 F. Lib. Intr. 685.

Sale of deceitful things.

If one pretend Right to Things, as a Parson, and sell them to me, knowing he hath no right, and by this I lose my Money; I may have this Action against him, albeit there be no Warranty in that Case for the same, nor Covenant for the quiet Enjoyment thereof: So if one shall sell Land to me, and agree to make me an Estate thereof by a day, and he before the day doth make it away, or some Estate out of it, or put some Charge upon it to another, and then make the Estate to me; I may have this Action for his Deceit, 3 N. 7. 14. F. N. B. 98. 20 H. 6. 34. 2 H. 7. 12.

For selling that which is none of his own.

This Action in Nature of Deceit, lieth, where one sells a thing he hath no Right or Propriety in: As if one pretends to be Parson of a place, and

and as such sell me my Tithes, or another mans Tithes in the place, or sell Lands another hath right to, and the Possession of; or a Horse another hath in his possession, without Covenant, Warranty, or Affirmance, that he hath right or title to sell, no Action will lie for this: But if he make any such Warranty at the time of the sale; this Action may lie, Croo. 2. 197. See 5 H. 7. 41. 9 H. 7. 21. Croo. 2. 1. 4. And yet there the case in 42. Aff. pl. 8. seemed to be agreed, where one took goods from another, and sold them, and the owner took them, See for this, chap. 15. sect. 3. case 10, 11. 15. 18.

With
warranty.

If one sell me a Horse, or other thing of another mans, as his own, and he knoweth them to be the goods of another, and it be after taken from me, or I be molested about them; I may have this Action, but otherwise it is if he know it not, and therefore the Declaration must say sciens, that they were the goods of a stranger, or it is not good, Croo. 1. last publisht. 44. Coe. 4. 18. 8. 42. Aff. 8. Croo. 2. 196, 197.

So if one sell me Cattle, and affirm onely that they are his own Cattle, and they be not so, I may have this Action against him, and that before I am sued, or the Cattle took from me, Croo. 2. 474.

So if one shall sell me a Horse, or other Cattle, and warrant them sound, and they be not so, Noys Rep. 124. Yelverton. Rep. 114. See chap. 15. sect. 3. case 1. 4. 5, 7, 9.

So of all cheating Contracts: Where one sells deceitful wares, or other things, or by deceitful measures, or use any other deceit with Warranty, or without Warranty: As where one doth sell me good, and deliver me bad, Dyer 75. sell me unwhole-

With
warranty.

lore

some Bread, Beer, Wine, Meat, Railons, Apothecaries Drugs, or any thing that goeth into the body, and may hurt it, knowing it to be so, 19 H. 6. 53. 22 H. 7. 91. N. B. 88. 5. that sells me Wine mixed with water, a Horse not sound, knowing it, 20 H. 6. 36. 13 H. 6. 2, 5 H. 7. 61. 9 H. 7. 21. 9 H. 6. 53. 7 H. 6. 15. 11 Ed. 6. 6. 62. Ass. pl. 8. That sells me bad Cloth, knowing it, 21 H. 7. 91. That doth promise me for my Honey to deliver me that which is good Gum, and doth not, Mich. 7. Jac. B. R. Weston and Dighton. And if there be a Warranty in the case, then is the Action more unquestionable, N. B. 96. J. 9. N. 6. 3. 5. Croo. 2. 196, 197. But see more, chap. 6.

Sale of
corrupt
Viduals.

And for deceit in sale, of corrupt viduals, it is held, this Action will lie, albeit there be no Warranty in the case, Kelw. 91. 8. 11 Ed. 6. 6. But it is held by some Books otherwise: for false and sophisticated Wares, Dyer, 75 76. Yet see Kelw. 89. 7 H. 4. 10. 13 H. 4. 2. 9 H. 6. 52. 11 H. 6. 22. 19 H. 6. 49. F. N. B. 88. Croo. 2. 96, 197.

So it is held, if one sell me a Horse unsound, and I know him to be so, without Warranty, I may not have this Action for this, F. N. B. 94. Action, &c. pl. ult. See Stiles Rep. 310.

So if I buy corrupt Wine, or Viduals, and I, or my Servant taste it before-hand, and accept of it; that in this case I can have no Action, 7 H. 4. 16. 13 H. 4. 2, Bridgman Rep. 127, 128.

Deceit by
a Trades-
man in his
Trade.

If one sell me a Sapphire for a Diamond, in his Trade, as a Goldsmith, &c. it hath been said; this Action will lie for this deceit, without any Warranty in this case, Kitch. 174. and yet it is said in Croo. 2. part 4. to be adjudged, that if a Goldsmith sell me a Stone, and say it is a Bezar Stone, but

but both not warrant it to be so; that no Action will lie for this, See for this, chap. 1. sect. 3. case 5.

If a man sell me any living or dead thing, as Cattle, Cloth, or the like, and at the time of the sale he both warrant it to me good and right; or if it be Cloth, that it be of such a length, or the like, and it is not so; I may have this Action against him; and this, albeit I have not paid all my Money for the thing bought, and albeit the Warranty was made to another to my use, so it be made at the same time, Kelw. 89. 9 H. 7. 22. 5 H. 7. 41. F. N. B. 94. 58. Old N. B. 50. 11 Ed. 4. 2. See chap. 4.

If one sell me a Horse, and warrant him sound, and he hath at the time of sale and warranty, Spavins, or Splints, or other visible infirmities, which the buyer may see if he will; it is said this Action will not lie for this, Croo. Rep. 2. 631. Doff I sell Purple to one, and say it is Scarlet, Bulstr. 3. 94. One sold false Bills of publick Faith, and assigned them, affirming them to be true, and for this had an Action, and it was allowed, Stiles Rep. 343.

344. If one be in sale of a Heale to me, and to advance his price, tell me that I. S. did bid him a Hundred pound for it, to which I giving credit, buy it, and give him a Hundred pound for it; but I. S. did never bid him a Hundred pound for it; yet for this I may not have this Action against him, Adjudged. B. R. 4. Eliz. Taylors case.

If one sell me two Oxen, and warrant one of them sound, and I in my Action pretend a Warranty of them both, and the Jury find for one onely, yet I shall recover damages for this deceit, Croo. 1. last published, 885.

If one sell me a Horse, and both not warrant him

Against an
Officer
imbezelling of
Records.

him, although he be not found, no Action will lie against him for this: But if he warrant him found to me, and it be not so; I may have this Action, Bullstr. 3. 95. This Action will lie against a Sheriff, or his Deputy, or an Attorney, for the imbezelling of a Record; but not against a Sheriff for the imbezelling of his Deputy: And it will lie against the Custos Brevium, for imbezelling a Writ delivered to him, 19 H. 6. 30. 7 H. 4. 6.

If a Summons be returned in a Formedon, where it is not made; or if the Defendant upon an Execution, render himself, and hath a Superfedeas, and yet the Sheriff will out-law him; he may have this Action against him, or sue him in the Exchequer, 26. Aff. pl. 48. Bill. 12. 53. Ed. 3. Error. 77.

Deceit of
an Officer.
Sect. 3.

So if an Elcheater make a Return of an Office, where none is found; or make a false Return of one found, 9 H. 6. 60. Action upon the Case. 6. 21 Ed. 4. 27. be the Office found virtute brevis, or virtute officii, 14 H. 7. 10.

Forgery
and counterfeiting
of Deeds,
&c.

If one forget a Statute Staple in my name, and it be made use of against me, by which I am hurt; I may have this Action against him, Fitzh. F. 9. 6. B. 5 Ed. 4. 126. But for forging of it only: If it be not given in evidence, or made use of against me; no Action will lie, F. N. B. 99 R. 5 Ed. 4. 116. 126.

Against a
Servant.
For counterfeiting
of a Letter.

If my Servant counterfeit a Letter in my name to A. B. that he would send me Twenty pound upon the delivery whereof to A. B. he delivereth the Twenty pound to my Servant; A. B. may have this Action against him, 33 H. 8. Pasche. 7. Jac. B. R. Tracy versus Veale, alias Smith, Adjudged.

If a Servant of mine have Money of mine in
his

his hands, and a stranger procure a counterfeit Letter to him from me, to pay this Money to him upon a pretended Debt I should owe, and by this deceit get the Money; I may have this Action against him for this, Croo. 2. 223. See chap. 15. sect. 3. case 2.

If A. be Excommunicated, and sent to B. the Parson of the Town to pronounce, and he put out A. and put in B. and read it in the Church, by which B. is molested; he may have this Action, Croo. 1. part last publisht. 838.

If a Tenant in ancient Demesne Levie a Fine of his Land at Common Law; it seems the Lord may have this Action against him, Plow. 370. F. N. B. 98, 99. Tenants in ancient Demesne.

If my Servant buy Goods or Cattle for me of another man, for a sum of Money, part in hand, and the rest to be paid at a day to come, and die, and the Seller after my Servants death both demand of me the Money to be paid at the day to come, affirming that it was not paid, and I giving credit to his saying, pay it again; I may have this Action for this Deceit against the Seller, and yet perhaps I may also have an Action of Account, if I please, Croo. 1. 100. Contract of a Servant.

If one that hath a Factor in Barbary have these Jewels that are counterfeit, and knowing me to be there, he acquaints his Factor therewith, and commands him to conceal the counterfeiting thereof, and directs him to me being there, and the Factor comes to me, and intreats me to sell these Jewels for him, telling me they were good Jewels, and thereupon, I, not knowing of the deceit, sell them, being worth not above a Hundred pound, to the King of Barbary, for Eight hundred pound, by which I am imprisoned, and troubled there, till I repay the Sale of deceitful Wares. Counterfeit Jewels
Eight

Eight hundred pound to the King; it seems that this Action will not lie for this deceit, Croo. 2. 469. Bridgman 126, 127. See the case. chap. 15. sect. 3. case 5.

Clothier
in sale of
Cloth.

If one Clothiers Cloth be very good, and much in request by his mark, so that in London the same is bought by sight of the mark, without more to do; and another Clothier doth put this mark upon his Cloth, without the Clothiers privacy, whose mark it is, by which the buyer is deceived; he may have this Action against him that did counterfeit the mark, Croo. 2. 471. See it. chap. 15. sect. 3. case 5.

Master &
Servant.

If one command his Servant to sell an ill Horse, and the Servant sell him for a good one, whereby he is molested and troubled; yet he may not have this Action against his Master, Croo. 2. 471. By Just. Haughton.

If a Goldsmith make Plate, wherein he mixes dross so that it is not according to the Standards and sends his Servants to a Fair to sell it, who sells it for good Plate according to the Standards; in this case it seems an Action of the case will lie against the Master for this deceit, Croo. 2. 470, 471. See more for this, chap. 4.

Deceit in
Games.
Sect. 4.

If any man play with me with false Dice, or false Cards, and thereby cheat me of my Money; I may have this Action against him, N. B. 95. D. Regist. Orig. 240. No. Lib. Intr. 8. sect. 8. Croo. 1. 87. Croo. 1. last published. 90.

About a
sale of
Land.

If one have a Term of years of Land to sell, and I am buying it, and I. S. affirm to me, that it is worth a Hundred and fifty pound to be sold, and thereupon I give so much, but it is not worth it, nor will yield it; this is no such deceit, as I may have this Action for it: But if the seller shall
war=

warrant it to the buyer, to be of such a value when he sells it; there perhaps it may be actionable, Yelverton. 20.

If I put a Carriage to a Carrier, and the things to be carried are before him, that he may see and know what it is; and I tell him the weight thereof is but so much, and it fall out to be much more, and the Carrier relying upon my word, doth not weigh it, but doth put his Cattle to it, and thereby over-draw them, and hurt them; yet no Action will lie against me for this, Bulstr. 3. part 95. 9 Ed. 4. 3, 4. But if one should lend his Cart and Horses to another, and he over-load the Cart, and by this hurt any of his Horses; for this the party grieved may have this Action, by Crook Just. Bulstr. 3. 94, 95. So if I say, send your Cart to me to carry Wood, and I will give you so much a load, and trust me with it; in this case if I over-load and hurt his Cattle, he may have this Action: And yet if the Owner, or Carrier be present whilst this over-loading is, and doth direct and order the business; no Action will lie for it, Bulstr. 3. part 94. See chap. 15. sect. 3. case 1. 16.

By mis-report.

For a Carrier.

Upon delivery of Goods.

If one be buying of a Lease, and I tell him it is more worth, more than it is; no Action will lie against me for this mis-information, chap. 15. sect. 3. case 3. out of Yelverton. Rep. 20.

If I retain one to buy Land for me, and he buy it for himself; I may have this Action, 16 H. 6. Action, &c. 44. 3 H. 7. 14. 17. But if he be retained to buy Land for me of I. S. and I. S. die, he is discharged, and may now purchase it to himself, 3 H. 4. 14. Action, &c. 20. 20 H. 6. 27. 3 H. 7. 14. 17. But if he do his endeavour to do it whilst I. S. is alive, no Action will lie against him, 11 H. 6. 18.

One trusted to buy for me, buys for himself.

If

If I appoint my Attorney to take an Obligation for me, and he take it in his own name for himself, or to buy a Lease for me, and he buy it for himself, I may have this Action against him, 20 H. 6. 4. 25. 3 H. 7. 14. Broo. 117.

If my Servant, trusted to do work for me, do it deceitfully, by which I have damage; as if I be a Merchant, and appoint him to pay Custom for me, and he do it not, but put it into his own purse; this Action lyeth, Lanes Rep. 68. Croo. 2. 265. See chap. 15. sect. 3. case 6.

Vexatious
Suit.

If I enter into a Statute to pay Money by a day, and pay it, and after a Stranger get the Statute, and sue me in the Conusors name, without his leave; I may have this Action against him: So if any man shall sue me in anothers name, without his privity, F. N. B. 96, 97. 100. Fitz. Action, &c. 3.

By under-
selling of
my goods

If one be indebted to me Two hundred pound, and delivereth me Two hundred pounds worth of Goods to sell, and pay my Debt, and I am proffered Two hundred pound for the Goods, and refuse it; but afterwards I sell them for a hundred pound; in this case he hath no remedy against me: But if there be any fraud in the sale, that it is so sold by me, to deceive him; he may have remedy against me in equity, 18 Ed. 4. 5.

By sale of
false Bills
of Pub-
lick Faith.

An Action was brought for selling to the Plaintiff false Bills of Publick Faith, and was maintained, Adjudged, Stiles Rep. 343. See chap. 15. sect. 3. case 12.

By giving
in a false
note of
Excise.

An Action was brought against a man for bringing in a false note of Excise, for which Excise was to be paid, by which a special damage came to the Plaintiff, Adjudged, Stiles Rep. 368, 369. See it chap. 15. sect. 3. case 13.

¶

If one shall Deceitfully Proletute me in an Acti-
for a Debt, that he knows is paid; this Action will
lie, Croo. 1. last publisht 795. See the case, chap.
15. sect. 2. case 8.

This Action will lie also for deceit in an Officer
about the Execution of his Office, But see for this
chap. 10.

C H A P. VII.

Of an Action upon the Case for a Breach of Trust,
and where it will lie for this, or not.

This Action doth sometimes arise, and grow, Sect. 1.
by, upon, or about some thing wherein is a
Breach of Trust, or Confidence; for the opening
whereof, take these following Cases.

In Trin. 7. Jac. In the Exchequer, it was said Against a
by the chief Baron Tanfield, that if my special Steward,
Servant, as my Steward, Bayliff, or the like, Bayliff, or
Misdeemean himself in such a thing as belongs to other Ser-
his Charge; I may have this Action against him, vant, for
albeit there be no special Trust in the Case: But the Ma-
if he be but a general Servant, and there be no ster.
special Trust in the Case, so he is to Execute all
my lawful Commands; and if he do not, I may
have this Action against him; and yet if the thing
Commanded have not a Conveniencie in it: As if
I Command him to pay a Hundred pound at York, Horse-
and do not provide him a Horse, or give him Mo- man.
ney to Hire him a Horse, I may not Sue him
for not doing of this: And if such a general Ser-
vant, and not my Horse-keeper, take my Horse out
of my Pasture, and Ride him, this he is as a
Stranger

Trespas. Stranger to me, and I may have my Action against him: But it may be a Question, whether I may have this Action, or a Trespas: And yet if such a Servant shall without my appointment Ride my Horse, so as it die by the Riding; there perhaps I may have this Action, See Lanes Rep. 68. Croo. 2. 166. chap. 2. sect. 7.

Bayliff. If my Bayliff, or other Servant, that hath the keeping of my Cattle, shall Kill them, or Sell them, or lend them to another that shall Kill them; or if having the oversight of my Grounds, he shall without warrant from me, Cut down my Trees, or make other waste therein; I may not have this, but some other Action against him, 18 Ed. 4. 20. 27. Broo. 99. Croo. 1. part last publisht 777, 778. 12 Ed. 4. 13. And yet perhaps for some of these wrongs this Action lies.

Shepherd. If my Shepherd shall suffer my Sheep to be drowned, or to turn shabbie by his negligence, I may have this Action, Dyer 121. 2 H. 7. 11. Coe. 5. 13. But if he Kill or Sell them, some other Action, Croo. 1. last publisht 777. 784.

Plowman. If my Plowman shall suffer my Plow Cattle to be spoiled for want of looking to, or drive my Plow so hard as to hurt my Cattle, or the like, I may have this Action against him, 7 H. 4. 14. Coe. 5. 13. Broo. 99.

Butler. If my Butler shall break my Hamper, or the like, I may have this Action against him, 18 Ed. 4. 27.

If my Servant, that hath Charge of my Cloth, suffer it to be consumed with Moths, 27 H. 8. 25. Broo. Action, &c. 103. Regist, 107. A.

Horseman. So if he have the Charge of my Horse, and suffer it to die by his neglect, 12 Ed. 4. 13. Broo. Action,

Action, &c. 103. So if he hath the Charge of my Release, Wor, or other Goods, and lose it, 34 H. 6. 4. Lib. Intr. 9. A.

If I be a Merchant, and going beyond Sea to ^{Between} Merchandize, do appoint and trust B. my ^{Mer-} Servant ^{chants.} to receive for me all such Goods as I shall send and Convey over, and to pay the Custome for them, and to dispose of them for my Profit, and I send over Goods consigned by me to him, and he of purpose to deceive me, and to have allowance of it upon his Account, and to deceive the King, doth Land some of my Goods, not paying the Custome, by which they are forfeit; in this Case I may have this Action against him for his Deceit, Lanes Rep. 65. Adjudged. Croo. 2. 266.

It will lie for me against my Bayliff or Servant, ^{Servant} that I trust to pay Money for me to another, that ^{trusted.} doth it not, by which I suffer Damage, 20 H. 6. 9. As if it be on an Obligation, the which by the Non-payment is forfeited, 20 H. 7. 4.

So if my Servant Retained and Intrusted by me, ^{Servant} shall either not do, or refuse to do the work of his ^{trusted.} place, or not to do it well; this Action lieth against him, 14 H. 6. 18. Action, &c. 8. 3 H. 6. 36. And if I have a Covenant from him to do it, yet for the doing it amiss, I may have this Action, 20 H. 6. 36.

If my Servant be sent by me to one that doth ^{Servant} owe me Money, and he pay it to him, this doth dis- ^{trusted.} charge him, and bind me, and therefore I must have my Remedy against my Servant if he answer it not to me, and this perhaps by this Action: So if he shall go without sending, or without a Counterfeit Letter, or a Message, and the partie deliver him the Money; albeit this will not bind me,

nor discharge him, yet if the Money come to my use, and I agree to it, this will bind me, and discharge him: But if I suffer any thing hereby, that I do not agree unto, I may perhaps have Remedy by this Action, Doct. and Stud. 138.

Sect. 2.
Servant
trusted.

What Act
of his shall
bind the
Master:

If I make a man my general Receiver, and he receiveth Money of a Debtor of mine, who am his Master, and maketh him an Acquittance, but doth not pay the Money to me; this payment will bind me, and discharge him, but if he make him an Acquittance, and not receive the Money; this will not bind me, nor acquit him: So if he take a Horse by agreement for the Debt; this will not bind me: And yet if I by writing make another my Receiver, and give him power to make Acquittances, and he make Acquittances of Debts not received; this will bind me, and acquit him, if my Receiver exceed his Power, and after I agree to it, this is a good Bar; but if he any way break his trust, and prejudice me; in these Cases I may perhaps have my Remedy by this Action, Doct. and Stud. 138. 131. Noys Rep. 111.

Equity.
Feesee of
Land in
Trust.

If my Feesee in Trust refuse to perform his Trust, I may not have this Action against him, but I must be relieved in Equity against him, Bulstr. 2. part 337.

Carrier.

If a Carrier take my Goods to carry, and willfully mar them, or negligently lose them, or suffer them to be Lost or Spoiled; I may have this Action, Hobb. Rep. 106. Noys Rep. 114. If I deliver my Pots, Glasses, or other Goods to a Carrier to carry for me, and he breaks, spoils, or loseth them, or suffer them to be so by his negligence; I may have this Action against him, 2 H. 7. 2. 11. Lib. Intr. 2. D. as where he over-loadeth

a Horse, and it fall into the Water, or dyes by
Sight, or out of the way, and is Robbed: And al-
beit they are delivered to his Servant, yet this
(especially) if it be his Common and known Ser-
vant, and me that useth to take in Goods for him to
carry; this will make the Master chargeable, Pasche
9 Jac. B. R. Wornhal and Bradshaw. And yet it is
held, that if one that is not a common Carrier un-
dertake the Carriage of any thing for me, and no
Wages is promised to him for it, that this is not
Actionable, is but Nudum pactum, 3 H. 6. 36. Re-
gist. 116. 112. see chap. 12. And yet if he be a Car-
rier that is newly set up, or he Carry for some per-
sons only (if he Carry for Money) it is Actionable:
But a Carrier, by a special agreement, as when he
undertakes the Carriage with this Caution, not to
answer them if they be lost; he shall not be charge-
able: So if there be no default in him in the Car-
riage, and the damage happen by the Act of God;
in this Case, unless there be some special Assumpsit
and good Consideration to ingage him in the Case,
it seems he is not to be Charged, Doct. and Stud.
38. 139. Fitz. 14. 15.

If I lend my Plate, or other Goods, to one that
shall waste or mis-use them, or convert them to his
own use; I may have this Action, 27 H. 8. 25.
Dyer 22. 2 H. 7. 11. 20 H. 7. 4. 2 Ed. 4. 5. 18
Ed. 4. 23. 21 Ed. 4. 19.

If I deliver one my Goods to keep, and he lose or
hurt them; I shall have remedy by this Action,
Coo. 3. 14. 2 H. 7. 1.

If I deliver Goods to A. to keep for me, and he
deliver my Goods to C. to my use, and C. spoil
them; I may have this Action against C. 12 Ed.
4. 13. Pl. 9. Action, &c. 19.

Against
goods lent
or deliv-
ered.

Against
one trust-
ed with
Goods.
Sect. 3.

If I deliver a Bag sealed, and Twenty pound in it to one, and he break the Seal off it; I may have this Action, 21 Ed. 4. 30. Pl. 25. Yet see 20 H. 7. 4. Action was brought for breaking of a Chest, or Box, with Money delivered to him, to re-deliver, or to deliver over, and that it was broken by the Defendant, and the Money converted to his own use, and it was said, it was sufficient to traverse the Conversion to his own use.

If I deliver Goods to one to deliver over to another, and he shall not deliver them over accordingly, but break his Trust, and Convert them to his own use; he doth by this make himself liable to my Action, and to the Action of him to whom they are to be delivered, and either of us may have our Action against him; and albeit he to whom the Goods are to be delivered over, have not the possession of them, yet he may have this Action for the Non-fealance, and Breach of Trust; and if it be Money that is so delivered to deliver over, he is a Debtor of the Money, or accountable at my pleasure, Bullstr. 1. 68. Dyer 20, 21.

Attorney.

~~Ames~~

If I deliver Money to one to give to my Attorney that follows my Cause, and he deliver it to my Adversary; I may have this Action against him, 20 H. 7. 9.

A man

trusted to
buy Land
for me.

If I retain a man to purchase Land for me, and he doth it not; this Action lieth not, if he doth his endeavour, but if he purchase it for himself, I may have this Action, 11 H. 6. 18. 3 H. 7. 14. 17.

If I trust one to buy a Lease, or take an Obligation to me in my Name, and he buy the Lease for himself, or take the Obligation in his own Name; I may have this Action for this, 10 H. 6. 4. 25. 3 H. 7. 14. Broo. 117.

If one convey his Land to I. S. to the intent that I. S. shall convey it to I. D. to whom the Feoffee had sold it, and I. S. refuse to convey it to him, and doth sell it to another; in this Case the first Owner of the Land may have this Action for the Breach of Trust, Hughes Rep. 64.

If I retain and trust a Man to buy Land for me, and he Buys it for himself; I may have this Action: But if he be to buy Lands of I. S. and I. S. die, then is he discharged of it, and he may afterwards buy it for himself, 3 H. 4. 14. Action, &c. 20. 20 H. 6. 27. 16 H. 6. Action, &c. 44. And if he do his endeavour, in such a Case where he is retained, he is excusable.

If I for Money retain a man to be of my Counsel for the purchase of such Lands for me, and he take upon him to do it, and discover my Counsel, and by this help another to the Land; I may have this Action, 11 H. 6. 18. Action, &c. 7.

Counsel-
lor Disco-
ver my
Case.

If my Councelloz shall not give in evidence that which I shall inform him, and is pertinent to my Case; I may have this Action against him, by Popham, Croc. 2. 90.

This Action will lie for me against one that hath gotten a Protection of the King for me, and gives it to a nother of the same Name, 30 H. 6. 18.

For abuse
of a pro-
tection.

This Action lieth against a Ferry-man that surchargeth his Boat, by which my Horse is drowned, 22 Aff. 41. Or the Passengers are like to be drowned, but if the Danger accrue only by the Act of God, as by Tempest, or the like, without any default of the Ferry-man; no Action will lie for this, Cod. 12. 63.

Ferry-
man.

If a Farrier undertake the Cure of my Horse, Farrior, or of a Smith the Shooing of my Horse, and doth it not well;

well; this Action will lie, 19 H. 6. 49. 46 Ed. 3. 2.
3 See chap. 12. for this.

If I retain an Attorney, and Clerk of the Kings Bench to follow a Suit for me there upon a Bond, and give him my Bond, and take order to sue him to Judgment, and he neglects it, and doth nothing in it, but gives my Bond to the Obliger, to be cancelled; I may have this Action against him. And if there be two Obligees, and one of them bring the Action alone, he shall recover, and if the other sue afterwards, the Defendant may plead this Recovery in Barr, Adjudged, Tauton and Harris. 1 Car. 1. B. R. Latch. Rep. 124.

If an Inn-keeper refuse to lodge me, or harborage my Horse, when he hath room in his house, and may do it; I may have this Action against him, and the Constable of the Town may, if he will, compel him to receive me, unless he can give good reason for his refusal, as that his House is full, or that I have this plague, or the like, 14 H. 7. 22. Kelw. 50. Dyer. 158. 5 Ed. 4. 2.

But it seems he may refuse and justify the refusal to receive the Horse or Goods of any man that will not lie there himself, Pasche. 7 Jac. B. R. Walbrooks case.

And if I lose any thing out of Inns, or Common Hostry, whether Goods, Cattle, or Evidences; I may have this Action for my relief against the Inn-keeper, or Hostler; and this will lie, albeit the Inn-keeper did at first refuse me, and the goods lost were never delivered to the Host, or he never charged with them; and albeit his House be full of guests, and I keep the Key of my Chamber door myself; and although I leave open my Chamber door myself, or be robbed by my Chamber-Fellow, if
be

he be one the Inn-keeper placed with me, Croo. 8. 32. F. N. B. 95. Dyer. 58. Regist. Orig. 104. 11 H. 4. 45. 2 H. 6. 25. But in all cases where this Action is maintainable, these things must be in the case,

1. The goods must be lost, and lost out of a Common Inn, and so the Count must set forth, but not the Writ, and an Inn in London is within this Law, Popham 178.

2. The person to be charged must be a Common Host, or Inn-keeper, such a one as doth receive such Guests: for if one leave his Horse with one that is no Common Inn-holder, and he be lost, he shall not answer it; and yet if he have but newly set up the Trade; he is chargeable, Croo. 8. 32. Dyer. 158. 166. Popham, 179.

3. The party that loseth the Goods must make it appear, that the Goods were brought into the Inn, or House.

4. They must be lost in his passage and travel through the Countrey, transeundo per Patriam, Croo. 8. 31. Bendloe. 173.

5. The Goods must be the Goods of him that lodgeth there as a Guest, and not of one that is a Neighbour, or friend: And a man shall be accounted a Guest (as it seems) untill he hath been there three dayes, and not after; And therefore it is said, by Dodridge Justice, that if a Passenger lodge three dayes in an Inn together, the Hostler shall not be answerable for his Goods, if they be stoln out of the Chamber, Latch. Rep. 88. Gulielms case. And they must be the Goods of his Master that is such a Guest; and in that action the Master or Servant, either of them may have this Action against the Inn-keeper, Pophams Rep. 179. Bendloes Rep.

173. But it is not needful to shew that he was in his journey transient, and travelling. It is good enough to say he lay there onely, Noys Rep. 79. Latch. Rep. 126, 127.

5. If a man come in, in the morning, and his Goods be taken away before night; he shall have this Action, Popham 179. And if he belong as a Guest to the House, albeit he doth not lodge there, yet this remedy is given him; as if he lose his Horse, and do not lodge there, or before night; he shall have this Action: And albeit he be at the end of his journey, as a Clothier, or Tanner in London, yet he shall be accounted such a Guest: But if he board, or sojourn in an Inn onely, or stay a quarter of a year there, he will not be accounted a Guest capable of this Action, Popham. 179. Hetley. 49. Yelverton. 162. Bendloes. 18. Dyer. 158. Latch. Rep. 126, 127.

6. The thing lost must be gone out of the Inn, the House, or the Stable, for he is not bound to keep them elsewhere; and therefore if the owner bid the Hostler put his Horse to grass, and he be lost, the owner must bear it: But if the Host of his own head, put him out to grass, without the owners consent, the Host must bear it, Croo. 8 32.

7. It must be lost by the negligence of the Host, or his Servants, as in the cases before; as where the Guests Horse is put to grass without his privacy, &c. For if a Horse dye in the Stable, without any default of the Host, or his man, the Host is not to be charged, Pasche. 12 Jac. Co. B. Whitacres case. So if the Guest be robbed by his own man, or Chamber-fellow of his own choosing; no Action will lie against the Host for this; it must therefore be shewed, that the Goods came to his hands, Coe. 8. 33. 22 H. 2. 22. 38.

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8. The party that doth lose the Goods, must be a guest of the House, and a Stranger or Traveller at the time of the loss; for if he be but a friend invited by the Inn-keeper to lodge there all night, or a Neighbour that dwells near the place, this Action will not lie for him, Pasche. 7 Jac. B. R. Walbrooks case, Bendloes Rep. 173.

9. The Goods must be lost while the owner is there: For if one leave his dead Goods with the Inn-holder, and do not lie there himself, and the Goods are stolen, the Host shall not answer them, Bendloe 173. Yet if it be a Horse, or living thing which is left, by which the Inn-keeper doth gain, he shall answer for it: But if a man leave other Goods, as Hats, or the like, and the Host say, he will keep them safe, and the Guest doth not come in many dayes, and they be lost, the Host shall not be chargeable: And yet if the Guest go out in the morning, and come again at night, the Host will be chargeable for what of his Goods shall be lost, Adjudged, Croo. 8. 32. So perhaps where he goeth away and stayeth longer; if the Inn-keeper make any special promise to keep the Goods safe, an Action may lie, Brownl. 1. part 254. Croo. 2. part 189. Noys Rep. 126. One leaves his Goods in an Inn where he lay, and saith he will return within two or three dayes, and he goeth his way, and returneth, and the Goods be stolen; no Action will lie: But otherwise if he say he will return at night, and they be stolen before night. See a president, that he is to keep all the Goods that are left with him, ita quod damnum non eveniat Hospitibus nec aliquibus aliis, &c. Coe. lib. Entries. 345. Latch. Rep. 127.

10. There must be an agreement by the Host to entertain the Guest, or a shifting excuse to put him off:

off: And therefore if the Host tell him his House is full of Guests, that he cannot admit him, and the Guest saith, he will make a shift amongst them, and is robbed; the Host shall not be charged: But if the cause of the refusal be false, the Guest may have this Action for the refusal, Dyer. 158.

So if a Guest that comes into an Inn with Horse and Packs, be told at his coming, there is no room for him, and they cannot lodge him, and yet will not depart, but stays with his Horse and Packs, and without leave or appointment of the Host, or any of his Servants, takes his bed with some of the Guests there, and so lose his Horse or Goods; in this case the Hostler or Inn-holder shall not answer them.

But if an Inn-holder shall say to a Guest, when he comes in, put your Goods in such a place under lock, and I will warrant them, otherwise not, and the Guest suffer them to lie in an outer Court, and there they be lost; the Inn-holder shall not be charged, Dyer. 266.

But it will not excuse the Host to say,

1. That his Guest did not acquaint him with his Goods what they were, 42 Ed. 3. 11.
2. That he delivered the Key of the Chamber to the Guest himself.
3. That he knew not the Felons, 22 H. 6. 38. A.
4. That he said his House was full, and did refuse them, and the Guest said he would make a shift, unless it be true, and then it will, Dyer. 150. Kelw. 50. A. 14 H. 7. 133.

But to say, he bid his Guests to put their Goods in such a place, under lock and key, else he would not warrant them, and they would not, but put them in the open Court; this will excuse him, Dyer. 266. pl. 9.

5. That

5. That the Inn-keeper, when the Guest came to his House, was sick, and by occasion thereof de non sane memory, Croo. 1. last publisht. 622.

Lastly, an Inn-keeper is not accountable for any wrong done to the person of his Guest, Coe. 8. 33.

In this Action the Writ is general, but the Count is special, Coe. 8. 33. See Stiles Rep. 370. chap. 15. sect. 6. case 1.

CHAP. VIII.

Of an Action upon the Case for a Trover and Conversion, and where it will lie for this, or not.

Some of these Actions do arise, and grow, by, in, or about the finding, delivery, and conversion of Goods, for which take these things.

Trover and Conversion is a kind of Action upon the Case, which a man hath against another, that having gotten any of his Goods doth refuse to deliver them upon demand.

This some divide thus; In Deed, where the Goods are either delivered over to persons unknown or sold, knowing them to be the Plaintiffs Goods, or sold as to persons unknown, 33 H. 8. Broo. Action upon the Case. 109. Dyer. 306. pl. 66. Or in Law, where the Goods are wasted, 34 H. 8. Broo. Action upon the Case. 103. And where they be demanded, and he that hath them doth decay, or refuse to deliver them, Coe. 10. 46. 33. H. 6. 27. And this is in its nature but a special Action upon the Case, to recover damages, Mich. 22. Car. 1. B. R. Stiles Regist. 6. And it hath been held, that where one may have a Detinue, he may have this Action, or that Action at his election, 22 Car. 1. B. R. Stiles Regist. 6.

It

In what
case it
will lie, or
not.

1. For the
persons
that sue,
and are
sued, and
in what
name it
must be.

It will lie for the Husband and Wife, for a
Deed, by which an Annuity was granted to the
Wife; for this the Wife is to have if she survive
the Husband, Trin. 40. Eliz. C. B. Russel and Cates-
by. So for the Goods of the Wife, Dum ipsa sola
fuit, Stiles Rep. 261.

If it be brought for Corn upon a Lunaticks
Land, it must be brought in the Lunaticks name.
Hobb. 215.

If my Lessee for Years, or Life, suffer a Stran-
ger to Cut down an Oak upon my Land, and car-
ry away the Bark of it, or the Tree; I may have
this Action against the Stranger for this, Croo. 1.
part 176.

It will lie against any man that hath had my
Goods, and Converted them; as if it be a Horse
and Sold by Twentie men, I may bring the Acti-
on against either of them. And it will lie against
any one that hath the possession of my Goods, al-
though it be but by borrowing only, by Baron Hen-
den. 17 Car. 1. at Glouc. Assizes.

If A. take Goods to the use of B. and B. do after
agree to it; in this Case it is doubted whether this
Action will lie against B. because A. by his taking
hath diverted the proprietie of them.

It will not lie against Husband and Wife upon
a supposed Conversion by them both to their uses
but it must be against the Husband alone, Croo.
2. 661. Croo. 1. 355. Yet see Leonards Rep. 312.
But it will lie against Husband and Wife upon
the Conversion of the Wife during the Coverture.
And so also for a Trover and Conversion, Dura sol
fuit, Croo. 1. last publisht 841. Noys Rep. 79.
Brownl. and Goldsb. 3. But care must be had in
drawing the Declaration, Stiles Rep. 48. 124.
Bulstr. 3. 150.

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It will lie for an Executor or Administrator, upon a Trovet or Conversion, and for a Conversion in the life time of the Testator, Croo. 1. 159. and 1 last publisht 377.

It will lie for an Administrator for the Goods taken by one before the Letters of Administration granted him, Stiles Rep. 341. 261.

If the Master deliver Corn to his Servant to Sell, and he make Money of it, his Money being received, is the Masters, and he perhaps may have this Action for it, Mich. 40. 41 Eliz. B. R. Holliday and Hicks. See chap. 15. sect. 4. case 3.

He that brings this Action, must bring it for such things, and declare for them in such words, as the Law doth prescribe: And for this we are to know, 2. For the thing sued for. Sect. 2.

That this Action will lie for Money at large out of a Bag or Chest, or in a Bag or Chest, or for so many pieces of Gold, of Twenty Shillings a piece, or for so many pieces of Silver in certain, or for Ten pound in Money; but not for Money found, if it be not in a Bag, Croo. 1. last publisht 638. 661. 818, 819, 841. Croo. 1. 63.

And it will lie for any other Goods Animate, as Oxen, Horses, Sheep, Hens, and the like, or Inanimate, as Jewels, Rings, Carpets, Chairs, Stools, and the like, Croo. 1. 63. Trin. 43. Eliz. C. B. Hall and Wood. Pasche. 24 Eliz. in the Exchequer. But if it be for Money out of a Purse, it will be good to set it forth, specially that he lost it, and the other found it, Croo. 1. last publisht 568.

It will lie for Woods or Trees Cut down and severed from the Land, as for a Hundred Loads of Wood, and Forty Batches, No. Lib. Intr. 41. B. sect. 33. Croo. 1. last publisht 819. But it will not lie for Wood growing, Mich. 20 Jac. B. R. No. 1 for

for any thing that is a part of the Freehold, or
Lead upon a House, or the like, till it be severed
from the Freehold. It will lie for the bark of
Tree, Croo. 1. 176.

It will lie for Fifty pound of Wool, ad volen-
tiam, &c. and pondus shall be taken for a pound
weight, Mich. 9 Jac. B. R. Roe and Lloyd.

It will lie for a Bond, or other Writings, Croo.
1. 190.

It will lie for a Chain of Gold found and sold
Dyer, 121. Pl. 14. For Hopps, Croo. 1. 370. For
a Trunk full of Linnen, Bands, Cuffs, &c. Croo.
2. 664. Croo. 10. 130. For Jewels in a Box, or
out of a Box. 2 H. 7, 4. Pl. 13 For Pearls and
Jewels, Croo. 1. 250. It will lie for Doggs, Het-
ley Rep. 50. So for any Cattle, Croo. 1. 197. 100
So for a Warband set with Diamonds, Croo. 2. 244
Stiles 44.

It will lie for Corn in a sack, or out of a sack
Croo. 1. 63. For four Bushels of Wheat, Trin.
12 Jac. B. R. Hill and Hauks. Twenty loads of
Wheat, Croo. 1. last publisht. 765. For Twenty
poaks of Corn, Trin. 38 Eliz. C. B. Price and S.
Walter Sands, So for a pint of Corn in the nature
of a dole, by a custome, or prescription, Bullstr. 2
part 201. For twenty loads of Hay of Wiche
Croo. 1. last publisht 214.

It will lie for Forty measures (or for forty
bushels) of Pippins. Mich. 9 Jac. in the Exche-
quer. Error inter Claydon & Taylor. For two bar-
rels of Butter, Croo. 1. last publisht 219.

It will lie for Monkeys, Deer, Hawks, and
such like things as are fere naturæ, when they
are reclaimed, but not before Mich. 9 Jac. in Ex-
chequer Chamber. Shakley and Porter. Croo.

2. 262. Bulstr. 1. 95. Croo. 1. 391. Croo. 2. 262. Dyer 306.

If one find an Obligation, and Cancel it not; this Action lieth not, but Trespals: And if he receive the Money, and deliver the Obligation to the Obliger, an Account, not this Action lieth, Croo. 1. last publisht 723. See Bendloes 140. 145. Stiles 361. 482. 209. 313. 18. 25. 31. 75. 136. 194. 199. 224. 235. 247. Croo. 2. 129.

If any man shall get into his hands any such Goods of mine, Living or Dead, being my Goods, by Finding, or Borrowing, or otherwise, in any Case whatsoever, and he hath no right to, or property, or possession in Law to the thing, and he waste it, convey it away, sell it, or otherwise convert it to his own use, or keep it from me; I may have this Action against him. And in some of these Cases another also at my Election, Croo. 4. 84. 29. Aff. Pl. 28. 12 Ed. 4. 8. 27 H. 8. 13. 39 H. 6. 2.

And therefore if I lose any such Goods, and another man find them, as if he take up my Hawk, that it escaped, or my Horse, or Beast that was estrayed away: Or if a man that is an Executor to another, have my Goods that were in the keeping of the Testator, and come to him amongst the Testators Goods: Or a Felon leave my Goods within a Panno, and the Lords Bayliff, seize them, not being waived: Or a man hide my Horse to an Inn, and the Inn-keeper keep my Horse from me; I may have this remedy for my Goods, 12 Ed. 4. 8. 12 H. 8. 39. 7 H. 4. S. Dyer 306. Lit. Broo. sect. 174. 382. 405. Finches Ley. 181. 186. Croo. 2. 25. 5. 27. 109.

If a man take another mans Cattle to Pasture, for so much by the Week, as long as they are with him, and I buy the Cattle, and then demand

3. For the Case. Sect. 3.

Bailment of goods.

them

them of him that keeps them, and he refuseth to deliver them without payment for the keeping, and afterward he delivereth them to another by order of him that sold them to me; I may have the Action against him that kept them; for in the Case without any special agreement made in the tack of them, he may not keep them, as an Innkeeper an Horse, or Taylor a Garment. Croo. 1. 197.

If a man take my goods before my face, or a Trespasser; I may charge him in this Action. Will. Croo. 63. Yet see Croo. 11. 89.

Gifts given by a Suitor to a Maid.

If I be a Suitor to a Woman, and knowing time lasteth, I give her Goods we break off, and I demand the Goods. I shall have the Action. Mich. 7 Jac. B. Case.

Detinue.

And generally where in any Case any thing of mine, in such a Case, as that I have a Detinue for them, after I have demanded them, and he hath denied them; I may have this Action, or a Detinue for them, which I will: And therefore one hath declared, that he delivered the Defendant certain Wools to keep, and he converted them to his own use, and it was held, albeit he did not say he lost them, it was good, and that the Conversion takes away the property. Croo. 1. last published 781. 2 H. 7. 20. Dyer 2. And in the Case of Cullimore and Symphon, Trin. 14 Jac. B. R. It was said by Dodridge Just. That in every Action of Debt, an Action of the Case is implied, and when it appears how the Debt grew due, then it is a good Assumpsit; and in the Assumpsit Action the Finding or Losing is not material plea.

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pleading: For if the Defendant take it in the presence of the Plaintiff, or before any other, or as a Trespass, yet the other may charge him in this Action, if he will, Croo. 1. 63.

But this Action will not lie where he that brings this Action hath neither Right to, or Propriety in, or hath had the possession of the thing Sued for, 20 H. 7. 7. Pl. 18. sect. 198, 231. Croo. 1. last published 484, 485. Nor where he brings his

Action upon a possession, and he doth not shew that he was once in the actual Possession of the

2. The Party against whom the Action is brought, have, or hath had the Goods in his possession, if he never had them, he is not charged in this Action, but it is not material whether he find them by finding; for if he take them away from the owners face, it lieth, Croo. 1. 63.

3. Where the Party that hath the Goods, hath committed a Trespass with a Trust: As where I deliver Goods to a Carrier, to Carry for me, and he keep, Waste, and Dispose of them; there this Action will not lie, for in this Case another kind of Action of the Case lieth, Mich. 9 Jac. Worm. and Walls Case.

But this Action will lie for Goods found and converted, although they come after the hands of the party that lost them, Stiles 361.

And it will lie for an Administrator for the Goods of the Intestate taken by one before the Letters of Administration granted, Stiles 341. In Pasche. 43 Eliq. Bishops Case.

If a Lords Bayliff shall seize my Cattle for a Herriot, where none is due; I may have Trespass, or Action upon the Case against him for it; but this Action will not lie,

them of him that keeps them, and he refuseth to deliver them without payment for the keeping, and afterward he delivereth them to another by order of him that sold them to me; I may have the Action against him that kept them; for in the Case without any special agreement made in the tack of them, he may not keep them, as an Innkeeper an Horse, or Taylor a Garment. Cro. 1. 197.

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If I be a Suitor to a Woman, and whilst the Marriage time lasteth, I give her Gifts, and afterwards we break off, and I demand the Goods, and she refuse to deliver them; it seems I may recover thereupon this Action, Mich. 7 Jac. B. R. Dame Fitz Case.

Detinue.

And generally where in any Case another hath any thing of mine, in such a Case, as that I may lay a Detinue for them, after I have demanded them and he hath denied them; I may have this Action, or a Detinue for them, which I will: And therefore one hath declared, that he delivered the Defendant certain Wools to keep, and he converted them to his own use, and it was held, albeit he did not say he lost them, it was good, and that the Conversion takes away the property. Cro. 1. last published 781. 2 H. 7. 20. Dyer 2. And in the Case of Cullimore and Symphon, Trin. 14 Jac. B. R. It was said by Dodridge Just. That in every Action of Debt, an Action of the Count is implied, and when it appears how the Debt grew due, then it is a good Assumpsit; and in the

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Action the Finding or Losing is not material plea

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session; for if he never had them, he is not charges-
able in this Action, but it is not material whether
he have them by finding; for if he take them away
befoze the Owners face, it lieth, Croo. 1. 63.

For where the Party that hath the Goods, hath
them by delivery with a Trust: As where I deli-
ver my Goods to a Carrier, to Carry for me, and
he doth keep, Waste, and Dispose of them; there
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Sec. 4.

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passe, or Action upon the Case against him for it;
but this Action will not lie.

So where he that hath the Goods hath a good right to, or property in them by Sale in a Market, Fair, &c. or Gift, or as a Herriot, Estray, or the like, Dyer 306. Croo. 1. last published 146. 434. 434. Or hath good authority by Law to take them Croo. 1. last published 433. 459. 611. 693. 711. Bulstr. 3. 269. New Book of Entries 39. 4. Co. 815. Broo. Distresse. 198. Lit. Broo. 40. 193. Dyer 121. Pl. 16. Bulstr. 2. part 30.

For will it lie where the party that hath them hath a lawful possession of them only: As where a man put his Horse to me, a Horse-keeper, to keep him; or I being an Inn-keeper, detain him from his Master, or I only seize him as a Waife, or an Estray, distrain him for Rent, or the like, N. Entries. fol. 10. 41. Co. 8. 147. Hill. 14 Jac. B. 1. Robsons Case. Bulstr. 1. part. 170. Bulstr. 3. 269. 28.

For will it lie for a bare Finding, or Receipt and a possession only without a Conversion, Bro. 1. 405. For Conversion being the substance of the Action, is Traversable, Croo. 1. last published 97. 377. And therefore if one deliver another mans Goods to me, and I do not Convert them; Action will lie against me for this: And yet Glouc. Assizes. 1650. The Case was, a Colt followed my Man and Horses into my Stable, and he bid him put him up in another Stable, and gave him Meat, and the Colt was lost, and the Owner recovered his damages of me for him.

This will lie against an Executor for a Conversion in the time of the Testator, Croo. 1. last published 377.

So that to maintain this Action by a Plaintiff he must aver and prove these things.

1. That he hath a right to the thing.

2. That

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 146. 433.
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 93. 716.
 39. 41.
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 Plaintiff,

2. That

2. That the Defendant hath, or had it in his possession.

3. An Actual Conversion, that the Defendant sold them, or disposed them to his own use; or a Conversion in Law, that is, a demand of the Goods, and a denial, for how else shall a man that finds Goods know the Owners of them, and to whom to deliver them, Per Sergeant Turner at Lent Assizes in Glouc. 23 Car. 1. Broo. sect. 198. 231. 405. And Discreets makes no Conversion, but an unreasonable Detainer will make a Conversion, Hobb. 250.

Some say there must be an Actual Conversion proved; and that in Trin. 44 Eliz. Co. B. It was adjudged, that if A. deliver a Chain of Gold to B. and A. demand it, and B. deny it, and say he shall not have it, till he can recover it; that this was no Conversion; And that Hil. 12 Jac. B. R. In the Case of Isaac and Clerk, by three Justices, 33 H. 9. 27. That the Count is In usum suum proprium convertit & disposuit, and that naked denial is not a Conversion. But it seems the contrary is held and practized at this day for Law: And it was held by all the Justices (Popham absente,) Mich. 38. 39 Eliz. B. R. in the Case of Eason and Newman that a Request and Denial to deliver Goods is a Conversion, Croo. 1. last published 495. And so it was ruled by Baron Henden at Glouc. Assizes. 17. Car. 1. That a Demand and a Denial is a Conversion: And that whatsoever is such an Act for which Trespasse will lie, is a Conversion, to give this Action upon the Case upon a Trover. And it was said by the Chief Justice in the Case of the Chancellor, &c. of Oxford, Coo. 10. 56. That a Denial to re-deliver Goods upon Request, is a

Sect. 5.

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good evidence to a Jury for them to find a Conversion. And there it was said, that if A. bring an Action upon the Case against B. upon Trover and Conversion of Plate, Jewels, &c. and the Defendant plead, not Guilty, that this Prima facie is good Evidence to procure a Conversion: That the Plaintiff did request the Defendant to deliver them, and he refused; and therefore it shall be presumed, that he hath Converted them to his own use: But yet it is but Evidence; and therefore if this be found by special Verdict in such a Case, that the Plaintiff did request them of the Defendant, and he did refuse to deliver them; the Court may not Judge a Conversion upon this; for the Conversion must alter the Action of Detinue to a Trespass upon the Case, which a Verdict cannot do in Law: For in every Action of Detinue, there is alleged in the Declaration a request, and a refusal; yet it is good Evidence; and so it hath been alwayes allowed to prove a Conversion in this Case, that the Plaintiff did demand the Goods, and that the Defendant did refuse to deliver them. But for Honey out of a Bag, or Corn out of a Sack, which are things that cannot be known; there, it seems, a bare denial is agreed by all to be a Conversion, Pasche, 14 Eliz. in the Exchequer.

And in Croo. 1. part 190. Trover and Conversion was brought for a Bond, and he counted that it came to the Defendants Hand, and that the Plaintiff such a day and Year demanded it, and the Defendant had not delivered, but refused to deliver it, and Converted it to his own use; and a Writ of Error brought on a Judgment in the Case, and took Exception; but the Judgment was affirmed, and there it was held by the Court, that

that the denying to deliver it upon Request was a Conversion, Willson and Chambers. So the Court, Co. B. Trin. 14 Jac. That a Request, and a Refusal to deliver the Goods, is a Conversion. And so it is reported by Brownl. and Goldsb. 17. That in Trover it is usual to prove no more but that you requested the Goods, and the Defendant refused to deliver them. This is a Conversion, Stiles Rep. 361. Yet see Bulstr. 2. 307. See Goldsb. 152. East and Newmans Case. Demand and Denial is a Conversion, 43 Eliz. Co. B. Hut. Rep. 10. Hobb. Rep. 187. Co. 10. 46. 47.

And it is held where I may have an Action of Detinue. Detinue for Goods detained from me; in that Case I may at my choice have it, or an Action upon the Case, Stiles Regist. 6. Stiles Rep. 3. Leonard's Rep. pl. 303, 304. Bulstr. 1. part 29. 68 95. 120. 127. 170. So that if any man find me, or take them from me, or from another that hath them, or if he have them by my delivery, or by the delivery of another to whom I delivered them, and he either keep them from me, dispose of them, spoil or convert them to his own use, or they be stolen, or taken from him, and I suffer damage by it; I may in some of these Cases have either this Action, or some other at my choice; and in some Cases I must have another Action.

If a man find a thing, and use it; this Action will lie as before, but if he keep it negligently, as not to give a Horse found, or let a Garment found, be soth-eaten; it will not lie; and yet if he do of purpose spoil such a thing, as put Paper into Water, or the like; this Action will lie for this, Croo. 1. last published 219. See more for this. Stiles Rep. 12. 28. 25. 31. 48. 75. 126. 136.

182. 194. 199. 224. 235. 274. 261. 432. Bulstr. 3.
 151. 209. 269. 289. Stiles Rep. 313. 361. 382.
 Godb. pl. 255. 462. Bulstr. 2. pert 135. 201. 262.
 290. Croo. 2. 307. 129. Croo. 1. 206.

If I have found Goods, and the owner in this Action against me hath Judgment, and I die before Execution; he may recover the Goods from my Executor or Administrator, Croo. 1. last published 181.

Detinue,
 where it
 lieth.)
 Sect. 6.

It hath been before maintained, that in many Cases where I may have a Detinue for Goods, I may convert this Action into an Action of the Case; it will not therefore be impertinent to them, where a Detinue will lie for Goods; and for this it is to be known,

1. That a Detinue will lie for me against another that cometh to my Goods, Cattle, or Writings, either by finding, or by my delivery of them to him, either to keep, or to re-deliver to me, or to deliver over to another, and he doth not so, but refuseth to do it, detaineth, loseth, or misemployeth them; there I may have this Action to recover them, or damages for them, at my choice, Croo. upon Cit. 286. Dyer 331. Kelw. 64. 18. Ed. 4. 23.

2. That in all Cases where this Action of Detinue is maintainable, there must be these things in the Case.

1. The Action must be brought for personal Goods, or Chattle, valuable, and that may be known, such as are, Cloth, Householdstuff, Bags, or Chests of Money, Bags of Corn, Loads of Wood, Tuns of Oyl, and the like. But it will not lie for Money out of a Bag, or Chest, or Corn out of a Sack; but in such a Case the Action upon the Case, or some other Action lieth, rather than Detinue, Dyer 22. 29. 12 H. 7. 5. 12 H. 8. 3. 6 Ed. 4. 11.

Action
 upon the
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2. He that brings this Writ of Detinue, must have a right to, or a property in the thing demanded, when he brings the Writ, or he must be chargeable over to some other for the thing, *Coo. 11. 89. 27 H. 8. 33.*

3. The thing demanded must be once in the custody and possession of him that is to be charged, *Coo. 11. 89.*

4. This custody and possession must continue, and not be removed by Act of Law, as seizure, or the like, *Coo. 11. 89.*

5. The party to be charged by this Action must not have a Right to, or a property in the thing to be sued for.

6. The nature of the thing demanded must continue, *27 H. 8. 13. 12 Ed. 4. 8.*

7. If I have a Right to Goods, as an Herriot, Heirloom, or *Rationabilis pars bonorum*; or as an Executor where the Goods are amongst another mans Goods; I may have remedy for them by Detinue; and in some Cases shall recover damages for them, by this Action, *Kelw. 184. 8 H. 7. 10. Plow. 90. Dyer. 202, 331. See more. Yelverton. 194, 164. Bendloe. 170. March. Rep. 59. See more in the next chapter of this Head; and see chap. 15. sect. 3, 4.*

CHAP. IX.

Where an Action upon the Case will lye upon the Delivery of Goods to another, or not.

The Action of the Case doth oft times arise, and is occasioned by the delivery or bailment of Goods;

**Bailment
or Delive-
ry. How
it is.**

Seft. 1.

**Counter-
mand.**

Account.

Pledge.

Detinue.

**Breach of
Trust.**

**Malefea-
cence.**

Goods, or Chattels from one man to another. And for the opening hereof, take these things.

1. **Bailment** is said to be either simple, where one receiveth my Goods, either to keep for me, or to my use, or to re-deliver to me again; in which Cases I may take my Goods again without request; or to deliver them over to another person; and in this case before they be delivered over, I may countermand the Authority, forbid the delivery of them, and require my Goods again, and if he refuse to deliver them to me, or shall deliver them to the third person after the countermand; I may in some cases have this Action for them, and in some cases an Account: Or this Bailment is conditional, that is, to be re-delivered to me when Money is paid, or something else is done; and then it is a pledge. And this delivery is sometimes to employ; as where I deliver to one my Goods, or money to use, or employ for my profit; as to sell meliori modo quo poterit. And in this case if he sell it for twelve pence, although it be worth a Hundred pound, or he might have had a Hundred pound for it: I can have no remedy against him for this, *Finches Ley, 176 5 H. 7. 28.* But in other cases I may have a Detinue, or take my Goods where I find them.

If I deliver my Sheep to another to keep, and he suffer them to be drowned by his negligence; or I deliver another a Chest to keep, and this is lost, or broken; or I deliver one my Horse to ride to York, and he ride him further; or I deliver one my Horse to keep safe, and he kill him; in all these cases, and for all these wrongs this Action lyeth as the proper remedy, *Coo. 5, 13. 12 Ed. 4, 18. Estoppel 78.* An Action was brought for this, That one delivered his Goods to T. who delivered them to the Defendant,

Chap. 8.
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Chap. 8. upon a Bailment of Goods.

315

bant, to the use of the Plaintiff, and the Defendant
had them. In this Case it was the opinion of the
Court, that this Action lay against the Defendant :
And there it was held, that if one deliver his Horse
to a Smith to shoe him, and he delivereth him over
to another Smith to shoe him, and he prick him,
that the Owner may have this Action against the
second Smith, 12 Ed. 4, 13. Action upon, &c. 19.

Smith had
my Horse
to shoe.

If I deliver one my Cloth, and he cut it, and
make Garments of it; I may have this Action
against him for it; And so for any thing else of
mine delivered to him, if he abuse it, 18 Ed. 4, 23.
20 H. 7, 9. 12 Ed. 4, 8. 2 H. 7, 11. 21 Ed. 4, 67.

If I deliver my Servant Money to discharge an
Obligation for me, and he doth not pay it as I ap-
point, and by this means I forfeit my Obligation;
I may have this Action against him, 20 H. 7, 9.

Master
and Ser-
vant,
breach of
Trust.

If I deliver Corn in Sheaves to I. S. and he thresh
them, and keep the Corn; I may have this Action;
or I may seize the Corn threshed, for the threshing
doth not alter the property, 38 Eliz. B. R.

Upon de-
livery of
Goods.

If I deliver one Money, and he promise to de-
liver it back to me, and he doth not; I may have
this Action for it, Lib. Intr. 10. sect. 1.

If I deliver to another my Deer, and he burn or
tear it; I may have this Action against him, 9 Ed.
4, 52. Detinue. 27.

If one lend me Corn, or any such like thing, he
may not expect the same thing in kind again, but
the like or so much. But if one lend or hire me a
Horse, or such a like thing, he must have his own
again in kind; And if it be used to any other pur-
pose, than that for which it was borrowed, or hired,
albeit it be never the worse for it, yet an Action up-
on the Case will lie for it. And if the thing be
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Upon a
Loan.

robbed, or hired, be lost, albeit it be not by any neglect of mine; as if I be robbed of it, or the like; Or it be impaired by any neglect of mine, albeit I put it to no other use than what I borrowed it for. As if I shall put a Horse I have borrowed in an old rotten House, ready to fall, and it doth fall, and kill him, I must make him good. But if such Goods so borrowed by me perish by the Act of God without any default of mine, as where a Horse is put in a strong House; and the House fall upon him, and kill him, or he die by some disease, that with all my care I could not prevent, or by the default of the Owner; in these Cases I shall not answer for him. And if a man deliver me, or leave with me his Goods in my House, or Shop, or elsewhere, to be kept, and I receive them in generally, without caution, such as this, I will keep them as I keep mine own, or if they be lost, I will not answer them, or the like; that in this case I am bound by Law to keep them safe, and to see them safely restored, albeit I do it out of charity, and have nothing for it; And albeit I do not make any promise to keep them safe, &c. and if in this case the Goods be hurt, lost, or spoiled, whilst they are in my custody. And (as some hold) albeit it be inevitable; by robbery, or the like means, and against my will, yet I must answer them. It will be therefore the wisdom of them that take into their custody any thing of their friends to keep for them, to take it into their custody with that caution, or not to meddle with it, 10 H. 8. 21. 2 H. 7. 11. 2 Ed. 4. 5. Co. 4. 38. 84. Co. upon Lit. 89, 29. Ass. pl. 28. 3 H. 7. 4. 10 H. 7. 26.

If one deliver me a Coffer with things in it, and the Coffer is lockt in my House, but he keepeth the Key thereof, in this case, if any thing be lost out

Delivery
of Goods
without a
Loan to
keep.

Caution.

my neg- of it, I shall not be chargeable: But if the whole
be like; Coffer and things in it be gone, I shall be answer-
able for it, Coo. 4. 82.

it for. If A. deliver Goods to B. to my use, or to deliver Sec. 2.
over to me; and B. detain them from me, A. or I
my self may have this Action against him, 5 H. 7.
13. F. N. B. 38. 21 Ed. 4. 55.

If I have Goods of anothers by delivery, and he
require them of me, I may no longer keep them,
unless I will expose my self to an Action about
them, Hutton. 10. Hobb. 187. Coo. 10. 46.

If I deliver a Jewel to one to transport beyond
Sea, and there to sell it, and render an account
thereof to me, and he break it, and convert it to his
own use; I may have this Action of the Case for
my relief, Croo. 1. last publisht. 520.

If I deliver to another a box of Jewels, or Po- Taylor.
ney lock'd fast in a box, to keep for me, or lend a man Carrier.
my Horse to ride, or deliver a Tayloz my Cloth to Hostler.
make a Garment, or deliver my Goods to a com-
mon Carrier, or my Horse to a common Hostler,
and he to whom it is delivered break the box, take
away the Poney or Jewels, ride my Horse further,
or do not deliver him back to me; Or the Tayloz
spoil, marr, or sell my Cloth; or the Carrier lose
or spoil my Goods; or the Hostler abuse or detain
my Horse; in all these cases I may have a Detinue
for the thing, and an Action upon the Case for the
abuse thereof, Coo. 4. 95. 18 Ed. 4. 23. Doct. and
Stud. 102. 2 H 7, 1. 12 Ed. 4. 8.

Detinue
& Action
upon the
Case.

But if one deliver me Goods, to deliver over to
another, and I do so, or deliver me a Horse sick of
others diseases, whereof he dyes, before demand of
him, or I re-deliver the thing again to him, or de-
liver it over according to appointment, before any

Suti

Taylor.

Suit brought, or the party that hath delivered, hath afterwards given me the thing; Or a Taylor keeps the Garment for his money for making of it; or an Hostler keeps the Horse for the money for his meat, or the Goods pledged be stoln before the tender of the money; in all these cases no Action will lie against me for the Goods, Coo. 4, 23. 21 Ed. 4, 55. 12 Ed. 4, 8. F. N. B. 138. 5 H. 7, 18. Coo. 4. 23.

If I take a mans Cattle to tack, and they dye in my keeping, or be stoln from me; it seems I am not to be answerable for them. And yet some doubt of this, 14 H. 8. 21.

Bargemen.

If Goods delivered be lost by the hand of God, as where there is a dangerous storm upon the water, and to save the lives of the Passengers, the Bargemen, or Mariners throw the Goods out of the Boat, into the Sea, or Sea-bozn; no Action will lie for this, Bullstr. 2. part 280.

Inn-keeper.

If a stranger come with my Horse to an Inn, and there leave him for a pledge for his meat; the Inn-keeper may keep him till he is paid for his meat; and no Action will lie against the Inn-keeper for it, Coo. 8, 146. Bullstr. 3, 289, 169.

Trover.

If I find Goods, and they are distrained in my hands for my Rent, or taken in Execution for my Debt, or upon an Out-lawry against me, or I sell them away; in all these cases the owner may have remedy by this Action against me, 27 H. 8, 13, 12 Ed. 4, 8. But my Goods may be taken in another mans ground damage-feasant, or as a distress for Rent if they be found there; and I shall have no Action for this against the owner of the ground, 27 H. 8, 13. 12 Ed. 4, 8. So if I will leave my Goods with another whether he will or no, and there

Chap. 9. delivered
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there they be taken damages-feasant, or as a distress for Rent; no Action at all shall lie against him for this: So if he himself on whom they are left, distress them damages-feasant; and yet if in this case he shall kill, or sell my Goods, I may either have this Action upon the Case, or some other Action, Croo. 11, 89. 43 Ed. 3, 21.

As to the Conditional delivery of Goods in the nature of a Pledge; and for the knowledge hereof, take these things,

About a
pledge of
Goods.

A Pledge is a pawn of goods laid, or bound for Money borrowed peremptorily to be the Goods of the Creditor for ever, if the Money be not paid at the day agreed upon. As where one doth deliver a Chattle personal to a man in an assurance of another thing had of him at the same time: And this either in deed, when it is by the agreement of the parties: As where one doth pledge Jewels, Plate, or Goods to another for Twenty pound which he hath borrowed, or doth owe to him, and if he do not pay the Money at the day, that the party shall have them; in this case if he pay the Money he is to have his Pledge again, if not, the other is to keep them; and if he pay, or tender the Money, he is to have it, or may have his Action of Detinue to recover them, if he refuse to deliver; or he may take his Goods again, if he can come by them; or it is by Law, as where one gives his Garment to make to a Taylor, when he hath made it, he may keep it till he be paid for the making of it; but he cannot sell, or use it, till he be paid for it. So a Horse in an Hostery is a Pledge; for an Hostler may keep him, but not sell, or use him, till he be paid for his meat, and if the owner leave him till his meat comes to as much as the Horse is worth, then he may

Pledge
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Sect. 3.

Detinue.

Taylor.

may sell him, and take the Money, Agreed. Trin. 3 Jac. B. R. Lit. 332. Kelw. 82.

The nature of it, and the interest of the parties to it, Property.

And in this case, the party that both pledge the Goods till the time of Redemption, or forfeiture, hath such a general property in them, as if in this time they be casually lost, he must abide the loss, and they cannot be forfeited by the party that hath them in pawn for any offence of his, nor may they be taken in Execution, or Attached for his Debt; and the party that hath them in pawn at first, or second hand, hath such a property special in them, that if the thing pawned be a Horse, Ore, or the like, he may work him, if a Cow he may milk it; and if it be any other thing that will grow much worse by usage, as Apparel, or the like, he may not use it; but other Goods not the worse for usage, may be used, and if he abuse it, an Action upon the Case will lie against him for this, by him that did put it to pawn; and so the Action will lie in other cases for any thing done on either side, for any thing done by the other party against these Rules. Owens Rep. 124. And he that hath the pledge may assign it over to another, who is to hold it subject to the same condition; and if the Goods be taken away from him that hath them in pawn, he may have an Action of Trespass for the taking of them, and say, Quare bona & Catalla sua sepit, &c. And if he that hath the pawn die before the day of Redemption, his Executor shall have it upon the same terms as the Testator had it, Broo. Attachment. 20. D. Doct. and Stud. 130. M. 7 Jac. C. B. Levils Case. by three Justices. Owens Rep. 124.

Action upon the Case.

Action of Trespass.

If one pledge Goods for Money, and no time is set for the Redemption of it; it seems in this case, it may be redeemed after the death of him to whom

Trin whom it is pledged, but not after the Death of him that pledged it, Croo. 2. 244, 245. And the tender of Redemption Money must be to the Executor, or Administrator, and when it is tendered at the time by Law appointed for the tender thereof, if it be refused, it is as good as payment, and the special property of the thing is Revested in him that did pledge it, Croo. 2. 244, 245. and Yelverton 178. And if Goods be perishing, and in case where no time is set to redeem it, and he let it lie till it be spoiled, it being Corn, Oyl, or the like thing, and there being no default in him that hath the possession of it; the party that pledged shall suffer the loss of it, and he to whom it is pledged shall have Debt for Money, as he shall in Case, where tender and refusal is of the Money, Croo. and Yelverton, the same places. Coe. 4. 38. upon Lit. 89. 2 Ed. 4. 5. 2 H. 7. 11. And Goods pawned may not be put in Execution, till the Debt for which they be pawned be paid.

If one deliver Goods as a Pledge, and before the Tender of the Money, the Goods be Stolen from me; in this Case I shall not answer them: But if he tender me the Money at the day, and I refuse it, and refuse to deliver the Pledge, and they be after Stolen away; in this Case I must answer them, St. Germin. lib. 2. 38. 2 H. 7. 11. 2 Ed. 4. 5. Coe. 3. 32, 38. upon Lit. 89.

And here it is to be noted, That in very many Cases where I may have a Detinue, or a Trespass for a wrong done to me, I may also order the matter so, that I may bring an Action upon the Case for my relief at my choice, Croo. 1. 63. Croo. 1. last published 781. 2 H. 7. 20. Dyer 22.

And in all these Cases about the delivery of Detinue.

¶

Goods

Goods, if they be kept from the Owner, he must have remedy either by Action of Detinue: Or if there be a Demand and Conversion of the Goods, he may have his Remedy by this Action upon the Case, Co. upon Lit. 89. Co. 4. 38. See more of these things, chap. 15. sect. 3, 4. throughout.

C H A P. X.

Of an Action upon the Case about Suits in Law,
and where it lieth, or not.

The Action upon the Case doth oft times grow and arise by something relating to Suits in Law, and by something done, not done, or done amiss thereabouts. For the knowledge whereof take these following things.

Sect. 1.

1. That Vexatious Suits are not favourable in Law, nor in the Courts of Law, Stiles Regist. 9.

2. It hath been said in B. R. by the Court, That it is cause sufficient to ground an Action upon the Case, for one to put another to the Trouble and Charges to Sue for that which is his own, Mich. 22 Car. 1. Stiles Regist. 6.

The Vex-
atious and
causeless
Suits.

If one Sue me in any Court of purpose to Vex me; I may have this Action against him for it, 8 Ed. 3. 13. 43. 1 Ed. 3. 20. And this is most clear in Case where an Agreement is between two or more to Vex me this way, Stiles Regist. 10. 8 Ed. 4. 13. 43 Ed. 3. 20. Co. 12. 100.

If one shall bring a Vexatious Suit, or Suits against me, as where one shall enter an Action of great value, and stand upon great Bail for small causes, Stiles Rep. 452.

So if one have his hand in a cause, or procure such vexatious Suits against me, I may have this Action; as if one cause a false Office to be found, whereby my Land is seized, 47 Ed. 3. 15. Kitch. 175. F. N. B. 108. F. N. B. 98. 116. See Stat. 8 Eliz. chap. 2. Croo. 1. last publisht 234. And yet it is said in this, that albeit the Action may lie against him that procureth, yet it will not lie against him that sueth without cause, Croo. 1. last publisht 794.

If one sue me for another, without his Privi-
ty, or by Mistake, and by this I am damnified; I
may have this Action, Croo. 1. last publisht 628.
But if one sue me for good Cause, although by this
any special damage happen to me, as my Creditors
fall all upon me, or the like; no Action will lie for
this, Trin. 15. Car. 1. Thurstons Case.

If I be Bail for I. S. in the Kings Bench at
the Suit of A. for one Debt, and after B. sues
him there for another Debt, wherein he hath o-
ther Bail, and after B. gets a Judgment against
him, and he fraudulently to vex me, &c. Informs
the Court that I am Bail for his Debt, and
maliciously follows it, and gets Execution a-
gainst me, knowing I was not the man; I
may have this Action, Croo. 1. last publisht 628.
629.

If one sue me in a Case where he is prohibi-
ted by a Statute (but without any Penalty in the
Statute) to do it; this Action will lie. But it
must be brought tam pro Rege; &c. quam pro seip-
so, Croo. 2. part 133. Coe. 12. 100. As if one
sue me for Tithes, where I ought not to pay
Tithes, a thing forbidden by 32 Eliz. chap. 7. I
may not have this Action for this, Adjudged. Par-

tridges Case. And yet the contrary seems to be held, Croo. 1. last publisht 836. Croo. 2. 134.

If I be bound to appear in a Court by a day, and before, or at the day, one cause me to be Arrested of purpose and Malice, to prevent my Appearance, and cause a forfeiture of the Bond; I may have this Action for this wrong, 7 H. 6. 45.

If one Sue me for a thing I have paid, or after he hath released me of the Action, and he doth this knowingly; some say, I may have this Action for this, Sed Quere.

It is said, if one Sue me for a thing Arbitrated, before the day come; it is said, this is Actionable, Regist. 111. 4.

If one release to me with Warranty, and then procure another by Collusion to Sue me for the Land; this is said to be Actionable, 34 Ed. 3. 20. Deceit 28.

If a Parson agree with me to retain my own Tithes, which is a good agreement by Word of Mouth; and he shall afterwards Sue me for them; this may happily bear this Action, Brown. 2. part 21. 17. Godb. pl. 426.

Forgery. If one forge an Obligation in my Name, and put it in Suit against me; I may have this Action against him, Coe. 4. 18. 22. Ass. 8.

It is said, that I may have this Action against him that shall Sue out a Latitat against me without cause, Stiles Kep. 211.

And yet if one bring against me a false and feigned Action, by which I am cast into Prison, and there die; no Action lieth against him by me, my Executor, or Administrator, Jenk. Century 4. Case 7. 2 R. 3. 10. Stat. 7 H. 8. 7. 21 H. 8. 4. So for any such like thing done in a Course of Justice,

Justice, for he will have amends in the same Court, as if he bring a Writ of Forgery, &c. for the Forgery of a Writ, &c. Dyer 245. Croo. 4. 14.

And where the Plaintiff in a Suit is barred, or Non-suit in his Action, regularly the punishment is but Amercement, and the Payment of Costs; no Action lieth for the Defendant, Jenk. Cent. 4. Case. 7. So if one sue me twice for the same thing, some say no Action lies for this: And yet others hold, that after the Suit is ended, the Defendant may have this Action for the Iteration, Croo. upon Lit. 130. Dyer 285. And yet it is said, that if I had paid my Money on a Bond to the Obligee at the day, and he doth after sue the Bond against me; that no Action will lie for this, Pasche. 17 Jac. B. R. per Gh. Justice. And if I have a Judgment against another, and have levied Goods upon an Execution to satisfy the Debt, and the Sheriff return, they are in his hands for default of Buyers; and the Plaintiff knowing of this, doth sue out a new Execution, and the Sheriff doth Execute this new Execution; that no Action will lie against the Plaintiff for this, Pasche. 17 Jac. Co. B. Waterer and Freeman.

If the Parson sue me in the Spiritual Court for Tithes of gross Trees, or sue me the second time for what he hath once recovered, it is said this Action will not lie: And yet it is said, also that if I sue him there after that I have shewed him a composition beyond the time of Memory; that I may have Action for this, Croo. i. last publisht 836. 18 Ed. 4. 6. But generally, no Action will lie against me for suing in any Court, as Plaintiff, or Defendant, where the Court hath Jurisdic-

tion of the Cause, and I have just cause to Sue, or defend a Suit, 7 H. 6. 45. 8 Ed. 4. 13. Action upon the Case. 4. Prohibition. 9.

If one prefer Articles, and take his Oath against me, to this end, to have me bound to the good Behaviour, before a Master of the Chancery; And afterward desists in this, and then gets a Supplicavit out of the Kings Bench, to have the good Behaviour against me there; I may have this Action against him for this last Act, but not for the first Act, although the Articles be scandalous, Brownl. and Goldsb. 3. And yet if one cause me to be vexed and molested before Justices of Peace by Indictment, or the like; I may have this remedy against him if it be without cause, and purpose to vex, Cro. 4. 14. F. N. B. 114. D. 116. a. See more, chap. 15. sect. 5. chap. 8. 10. 38.

For an undue proceeding.
sect. 2.

If one Sue me in a Court that hath not Jurisdiction, either of the person, or of the cause; this Action will lie; as for Suing in the Admirall Court for a thing done upon the Land; and for this the Admirall himself also may be Sued, Brownl. and Goldsb. 4. Or Sue an Appeal in the Common Bench, Dyer 159. Stat. 2 H. 4. chap. 11. Stiles Regist. 6.

So for Suing of me in the Spiritual Court, for a thing not Triable there; as for a Temporal thing, &c. this is Actionable, Croo. 1. last published 836. Croo. 2. 134.

So if one Sue me in the Kings Marshalsee, in a Case where neither of us are of the Kings Household; I may have this Action for this, Jenk. Century 8. case 34.

So if one had Sued me in the Star-Chamber, when it stood, for any thing whereof that Court had

had not Conuſance; I might have had this Action, But to Sue me in a Court that hath Conuſance of the Cauſe in an unſull Suit, or improper Action, will not, except in ſome Special Caſe bear this Action; for I ſhall have Coſts in the ſame Court for my recompence, Hobb. Rep. 266. Co. upon Lit. 261. 159. Dyer 285. Plow. 37. Co. 4. 14. 10. 76. 10 H. 6. 13. Croo. 2. 133. 1. laſt publiſht 836. Stat. 2 H. 4. chap. 11. Fitz. Eſtoppel. 18.

If one Arreſt me to appear in the Admiralty, and I was never Sued there, Co. 12. 100. Bendl. 3. 10 H. 6. 13. 7 H. 6. 30.

If one Arreſt me in London, knowing me to be privileged in Banco, 7 H. 6. 45.

If one caſt a Protection without cauſe, Croo. 1. laſt publiſht 628, 629.

If one Sue me in a Foreign County, and there ſecretly purſue me to Out-lawry, I having no notice of it; I may have this Action, New Book of Entries. f. 42. Stat. 8 H. 6. ch. 10. 6 H. 6. ch. 1. Kelw. 21. In another County. Out-lawry.

If an Officer in the Court of Audience proceed againſt me there illegally, by which I have any ſpecial damage; I may have this Action againſt him, Co. 2. 351. In another Court.

If one Sue me for Tithes in the Spiritual Court, when none are due; as where I have paid them, or none are due at firſt; no Act on will lie for this, no more than for Suing of me in any Common Law Court without cauſe; as where one Sues me in Debt upon a Bond where the Debt is paid, Croo. 1. laſt publiſht 836. Croo. 2. 134.

If I have in a Suit againſt another upon a Tryal, gotten a Verdict againſt him, and ſo am ſhortly to have a Judgment; and I ſhall before-hand Arreſt him upon another feigned Action, to have him

him in a readines, when this Judgment and Execution comes; he may have this Action against me, Stiles 211.

If one Arrest me in anothers Name without his consent, 7 H. 6. 43.

With
Fraud,

If one recover a Debt against me in the Common Bench, and I bring Error in the Kings Bench, and thereby the Record is removed thither: And he afterwards knowing all this, yet Sues out a Cap. ad Sat. against me, and by reason thereof I am molested; I may have this Action, Croo. 1. last publisht 574.

If I that am an Attorney, get a man to be removed by Habeas Corpus out of London by a Surmise, that he hath a Suit in the Kings Bench, which is not true; no Action will lie for this, Croo. 1. last publisht 628, 629.

If one Sue a Writ in my name, without my privy, and by this I am forced to pay a Fine; I may have this Action against him, Regist. 12. a. Q. Impedit. 112. A. B. See more, chap. 15. sect. 5. case 8. 12. 14, 15, 16, 17, &c.

Person-
ating ano-
ther,

If one in a Suit or Action shall come into a Court in my Name, and as in my person, and there shall do or suffer any thing as in my Name, without Warrant from me in it, by which I have any Damage; I may have this Action for it. As if one Sue as the Executor of the Consul of a Statute Execution thereof against me, where he is not the Executor, or where the Consul is alive; I may have this Action against him: So if he Sue as Administrator, and shew Letters of Administration, 2 R. 3. 8: So if one purchase a Writ out of Chancery in my Name, and thereupon a Fine is to be paid to the King: Or if I have

have cause to sue another, and a third man shall sue him in my name, and let Judgement go against me by non-suit, or the like: So if one acknowledge a Judgement, enter into a Bail, give a Fine, or suffer a Recovery in my name; and all this without my leave or privity; I may have this Action for my Remedy, F. N. B. 96, 97, 100. 19 H. 6. 44.

If a Writ be brought against two as Executors, and one of them is no Executor, and he confesses the Action, &c. the other that is hurt by it may have this Action, F. N. B. 98. 9 Ed. 4. 15. See more, chap. 15. sect. 5. case 9.

So this Action will lie against him that shall procure another to personate me in a Court, and thereby to do any thing in a Suit to my prejudice, Regist. Orig. 113. B.

This Action will lie against a Serjeant, Counselor, or Attorney, that is retained by, and engage for me in a Suit of Law upon good Consideration; that shall prove an Ambo-dexter, disclose the Secrets of my cause, play the Ambo-dexter, not give in evidence according to his instruction, mis-plead, or otherwise wilfully, or negligently do, not do, or misdo any thing therein against the duty of his place, and against his Trust, 11 H. 6, 2, 18. Action upon the Case. 7. Lib. Intr. 2. B. sect. 2, 3. 14 H. 6, 18. Croo. 2, 90.

Serjeant,
Counselor.
Attorney.

This Action will lie against an Attorney that shall engage in a Suit for, or against me without Warrant; or that having warrant, shall out of negligence or ignorance, negligently, or wilfully miscarry himself, and mismanage my cause to my damage, Coe. 7. 1. Dyer. 361. Coe. 6, 9. F. N. B. 95. 20 H. 7, 9.

This Action will lie against my Attorney retained

ed

ed by me in my cause, that shall make default in my Suit, whereby my Land is lost, Lib. Intr. 2. sect. A. 1. Regist. Orig. 113. 2. That shall mis-plead, i. e. plead otherwise than he hath authority from me, Stiles Regist. 4. That shall imparle in a Sute of mine, where the party is mis-named, because he loseth the advantage of the plea, 15 H. 7. 14.

That shall in a real Action against me by agreement, suffer a Judgement to be given against me, and the Land to be lost, F. N. B. 96, 95. Co. 6, 9. But if Judgement be had against me by default, being in prison, where I have been duely summoned, it is otherwise, Co. upon Lit. 259.

So it will lie against an Attorney for suing of another man in my name without warrant, or consent of mine so to do, albeit it be upon good cause: And this by an Act of Parliament is made very penal, 8 Eliz. ch. 2. Cro. 2, 88. 7 H. 6, 43, 45. F. N. B. 98. So for appearing for me, without warrant from me so to do, 15 H. 7. 14. So for pleading any thing in my cause without warrant from me so to do, Dyer 361. So for appearing and confessing of an Action without warrant, 9 Ed. 4, 13. 43 Ed. 3, 20. Regist. Orig. 113. 10 Ed. 4, 9.

So it will lie against an Attorney that shall outlaw me in the name of B. which B. at the time is dead, Co. 7, 1.

If an Attorney in a Suit in any Court against me shall unduly proceed in any thing, as enter a Judgement, and take out an Execution, after a non-pros. entred, or the like, and I have any special damage by it; I may have this Action: So if he shall lawfully procure a Judgement, take out Execution, and cause me to be Arrested and imprisoned, Huttons Rep. 125, 126.

It is said, that this Action will lie for me against a Serjeant, that being tendered his Fee, refuseth to be retained for me in a cause; and so for an Attorney. Nay, some think, if his Fee be not tendered, and he refuse to be retained by me, that this Action will lie against him; for these Officers may recover their Fees by the Law: But otherwise it is of a Barrister at Law; for he may not sue for his Fee when he hath given advice, by Just. Bridgman. 17. Car. 1.

Serjeant.
Attorney.

Sect. 3.

It will lie against him, that shall get, or pursue a Protection unduly and illegally, to delay my Suit, 15 Ed. 4. 19. 20 H. 6. 10. Regist. Orig. 119. B. Lib. Intr. 492. D. 493. sect. 2, 3.

About a
Protection

If one get a Protection for me, and then give it to another of my name; I may have this Action against him, 30 H. 6. 18. If one get a Protection for a year, and then doth not pursue it accordingly, or remove the Suit, to do such an Act whereby the party is grieved: So where it shall appear by matter ex post facto to be a delay, F. N. B. 97. 20 H. 6. 10. Co. 5. 34. Cro. 1. last published 794.

Delay.

This Action will lie against him that shall procure a Superfedeas for one upon a false surmise, that he is his Servant, or an Officer of the Court; where in truth the thing pretended is false, 21 Ed. 4. 23. 11 H. 6. 8. So where one shall get a Writ of Privilege, as a Servant to one of the Clerks in Chancery, who is not so, 11 H. 6. 8. and by this my Suit is delayed, 21 Ed. 4. 22.

About a
Superfedeas.

Privilege

If a Prohibition be delivered to a man to stay a Suit he hath against me in another Court, and he proceed notwithstanding; I may have this Action against him, F. N. B. 92. a

About a
prohibition.

If one indict me, or sue an Appeal against me in
and

another County than that I dwell in ; I may have this Action against him, Stat. 8 H. 6. chap. 10, H. 6. chap. 1. Kelw. 21.

Against
an Officer.

If a Sheriff, or any other Officer, or Minister of Justice, shall not do, or for his fee refuse to do, or this do amiss any thing about his Office to my prejudice, I may have this Action against him, Doct. and Stud. 134. 19 H. 6, 29. Co. 5, 89, 9, 60. Plow 48.

For hindrance & delay of a man in his Suit in law By Rescue or escape.

If a Sheriff Arrest a man upon a Writ of Habeas Corpus at my Suit, and return a Capi Corpus, and that the Defendant was rescued ; no Action will lie for this either for me, or for the Sheriff. But in case where a man is taken upon Execution, and so rescued, the Law is otherwise, March. Rep. 1. 16 Ed. 4, 3. Brooke. Escape. 37.

If a Defendant be taken in Execution at my Suit, and be rescued from the Sheriff ; the Sheriff may have this Action against the Rescuers. And so also it seems may the Plaintiff in the Suit, Croo. 1. 77. Dyer. 241. Pasche. 7 Jac. B. R. Kemps case. And if he be Arrested on a mean process, as a Latitat, or Capias onely, and another man rescue him, and so he get away ; I may have this Action, and recover the Debt and damage against the Rescuer, Hill. 20 Jac. B. R. Haws case. Or I may sue him that made the Arrest, and suffered the escape, were it after an Execution, Hill. 20 Jac. B. R. and 7 Jac. B. R.

By Escape
Sheriff,

If the Sheriff suffer his Prisoner in prison at my Suit upon a Capias ad computandum. 15 Ed. 4, 19. 16 Ed. 4, 2. Escape. 37. Or upon a Capi. utlagat. after Judgement, Croo. 1. last publisht. 235. 877. Croo. 1, 33. Or upon a Capias on a Statute Merchant. F. N. B. 93. A. Regist. Orig. 93. Or upon an Execution. Lib. Intr. 8. C. sect. 1. Croo. 1.

147. *Q* Upon a Cap. ad satisfaciend. 14 H. 7, 10.
 1 Ed. 4, 1, 2. 35 H. 6, 6. to escape, whether wil-
 lingly, or negligently, if he break away, and be not
 retaken on a fresh pursuit before my Action be
 brought; I may have this Action against him for
 this, 15 Ed. 4. 23 Co. 4. 95. Co. 52. Croo. 1.
 last publisht. 910, 893. And so it seems the Law is
 upon the escape of a man taken at my Suit upon a
 Capias utlagatum, before Judgement, Croo. 1. last
 publisht. 910, 967, 652. but the Suit on the Cap.
 utlagat. must be in mine, and the Kings name to-
 gether, Croo. 2, 533.

This Action will lie against a Gaoler that suffers By Escape
 one to escape that is committed to him upon the the Gaoler
 Statute of Labourers, 14 H. 6, 8.

If a Sheriff have one in his Prison, in Execution
 on at my Suit, and he, under pretence of an au-
 thority (that is not good) deliver him out of Pri-
 son; I may have this Action against him, Croo.
 1. last publisht. 893.

Some have held also, that this Action will lie a-
 gainst a Sheriff, Gaoler, or other such like Officer,
 that shall suffer one, taken upon an ordinary process
 to escape, Brownl. and Goldsb. 15. Regist. 111. A.
 B. Croo. 1. last publisht. 289, 280. And so the
 Law seems to be, but not upon a Rescue, unless it
 be in a Case of Execution, or Cap. utlagatum. Croo
 1. last publisht. 53. For there the Plaintiff in the
 Suit may have this Action against the Rescuers.
 For if a man be Arrested at my Suit, and another By Rescue
 man Rescue him, and so he get away; in this case
 I may have this Action, and recover the Debt and
 damage against the Rescuer, Hill. 20 Jac. B. R. and
 7 Jac. B. R. Hawks case. *Q* I may sue him that
 made the Arrest, and suffered the escape or rescue, at
 my

my choice; And shall have this Counter Remedy against him, or them that made the Rescue: And this is the proper Action to be had against the wrong doer, Hill. 20 Jac. B. R. Croo. 2. 289, 360, 361. And yet see Popham. 190, 191. whereby it doth appear there be different opinions in it.

By Escape

If a Prisoner of himself escape, against the will of the Sheriff, or Gaoler, that have him in custody; it seems this Action lies for the Sheriff, or Gaoler against him, F. N. B. 95. C. 130. B. For hereby the Sheriff or Gaoler is brought in danger to pay the Debt: And the Sheriff may have this Action against the Prisoner that hath made his escape from him after his Arrest, before he himself is sued by the Plaintiff in the Suit, Croo. 1. last published. 50, 235. 13 H. 7. 2. 14 H. 7. 1. But if the Sheriff have me in Execution, and carry me Prisoner into another place out of his Jurisdiction; this is a discharge of me, and the Sheriff cannot take me again, or if he do, I may go away, and he can have no Action for this, Croo. 1. last published. 293.

If a Prisoner escape by the Sheriff, or Gaoler's means, either willingly, or negligently, that the escape be voluntary, or negligent, the Plaintiff in the Suit will have this remedy against him by this Action. And if the escape be involuntary, and against their will; yet then they will be subject also to the Plaintiff's Suit; but in this case the Sheriff or Gaoler, will have his Counter-Action and Remedy against the Prisoner escaped, Croo. 1. 77. 7 H. 4. 14, Broo. 34. Croo. 1. last published. 349. Croo. 2. 289, 360, 361.

For any
Misfeasance.

If a Prisoner Rescue himself, the Sheriff will be chargeable, as if others Rescue him, process shall go against the Rescuers to punish them; but the Plaintiff

Plaintiff will have his remedy against the Sheriff.
Croo. 1. last publisht 868.

It is a Rule, That if the Sheriff, or other Ministerial Office of any Court, shall make a false Return, or shall otherwise misdemean himself by any Non-feasance, or misfeasance whatsoever, and I have any special damage by it; I may have this Action, but not unless I have some special damages: And therefore all the Cases here that speak of Officers in general, are to be understood of Ministerial, and not of Judicial Officers, for if they misdemean themselves in their Offices, some other way must be gone for relief by him that hath damage by it, Croo. 1. last publisht 730. Bulstr. 2. part 265, 338, 235. 12 H. 6, 3. 2 R. 3, 9. 12 H. 6, 3. See chap. 15. sect. 5. case 16. 34, 36.

If a Sheriff, or other Officer hath a Writ to arrest a man, at my Suit, and I shew him the man, or he is in his Company, and doth know him to be the man; I may have this Action against him, 14 H. 7, 27. Croo. 1. last publisht 173. Albeit it be the Sabbath-day, and I give him the Writ against the man that is there in the place, Croo. 5, 89, 9, 60. Plow. 48. and by three Judges. Pasche. 18 Jac. Noys Rep. 89.

Nota.

For not Execution of a Writ, &c. By an Officer, Sheriff. Sect. 4.

So if I offer a Writ to a Sheriff to arrest a man at my Suit, and he refuse him, especially if I offer him his Fee with the Writ, Bulstr. 3. 200. So where he hath a man in Execution at another mans Suit, and I deliver him an Execution at my Suit against the same man, and he doth not Execute it, Croo. 1. last publisht. 873.

So where he neglects to do any other thing he hath authority to do, and ought to do for me, by which I suffer Damage, Croo. 1. last publisht 175.

If special Bayliffs have a Proceſs to ſerve for me, and they come where the Party is, and take Money of him, and do not Arreſt him; it is probable I may have this Action for this.

For not
returning
of it when
it is Exe-
cuted.
By an Of-
ficer, Sher-
riff.

If a Sheriff, or other Officer ſhall not return, or ſhall reſuſe to return any Proceſs in due time delivered to him, when he hath Executed it according to the duty of his Office, 42. Aff. 12. 8 Ed. 3. 3. 21 Ed. 3. 43. 10 H. 7. 23. Or where he hath not Executed it, 2 H. 6. 5. 8 Ed. 4. 14. 42. Aff. 12. Croo. 5. 32. Croo. 1. laſt publiſht 175. 873.

If a Sheriff Arreſt a man upon a Capias utlagatum at my Suit, and do not return the Writ; yet it ſeems no Action will lie for this, but he is to be amerced only, Croo. 1. laſt publiſht 873.

If a Sheriff deliver a Diſtreſs upon a ſecond deliverance, and not return the Writ, by which he doth it, 21 Ed. 3. 43. 2 Ed. 3. 33.

If a Sheriff ſhall not put his Name to the Return of a Venire facias in a Suit of mine, and by this the Judgment is reverſed for Error; I may have this Action againſt him, Browol. 1. part 12. 15.

If ſpecial Bayliffs, that are not known Officers, when they have Executed a Proceſs ſhall keep it, and give no account, nor make return of what they have done; it ſeems this is Actionable.

If the Clerk of the Aſſizes ſhall take his Fee for entering a Jury upon Record, and not do it; this Action lieth, 34 H. 6. 4.

Clerk of
Aſſizes.
For miſ-
return, or
for other

If a Sheriff, or other Officer, ſhall miſ-return any Proceſs or Writ ſent unto him; this Action lie againſt him, Doct. and Stud. 134. B. 19 H. 6. 29. See chap. 15. ſect. 3, 7, 15, 24, 27. So for any falſe

false Return of his, in, or out of a Suit, F. N. B. 95. Co. upon Lit. 259. Co. 6. 9. 9. 32. Dyer 353. Croo. 2. 561. F. N. B. 97, 98.

As where he shall Return me Summoned, and thereby Judgment is given against me by default, and in truth I was never Summoned, or not in due time, here I may have this Action against the Sheriff, and against the Summoners, &c. But some say this Action will not lie after the Death of the Summoners, Heyors, and Purvoys; The same Law is upon a Garnishment, 2 Ed. 3. chap. 14. 112. B. Regist. Orig. 12. 8 H. 6. 1. 6 Ed. 4. 3. 8. 26. Ass. 48. 30 Ed. 3. 37. 26. Ass. 48. So where he shall return one Summoned, that Re vera is dead, 8 Ed. 3. 330. pl. 1. Mich. 12 Jac. B. R. Poles Case. Where he shall return a Nihil upon me, where I have Lands, by means whereof I am after taken by Capias, N. B. 93. B. Lib. Intr. C. sect. 2.

So where the Sheriff shall Return me 5 Exactus, and in truth it should have been 4 Exactus, 9 H. 6. 60. 81. Croo. 1. last publisht 512. So where he shall Out-law a man, and not proclaim him according to the Statute of 10 H. 7. chap. 23. Broo. 122.

So if the Sheriff shall return a Non est inventus, where it is not true, and thereby the party is Damned, F. N. B. 39. 31 Ed. 3. Proccs. 55.

But if the Sheriff have a Fieri facias against my Goods, and send his Warrant to his Bayliff, to Execute it, who doth so, and the Sheriff make a false Return; the Bayliff is not to be charged for this, Croo. 1. last publisht 190.

And where the Sheriff shall make a false Certificate,

mis-doing
in these
things.
By an Of-
ficer, Sher-
riff.
Summons.

ficat, in some Cases he may be Sued for this, as for the false Return of a Writ, Co. 11. 94.

If a Sheriff take ones Goods in Execution for me, and after deliver the Goods again to him, and make a false Return to cover the matter; I may have this Action against him, Stiles Rep. 431.

So if the Sheriff shall make another Return to the Court, than that which the Bayliff of the Franchise doth make to him, 36 H. 6. 1. 30. Ass. 5.

So if a Sheriff upon a Fieri facias at my Suit take a mans Goods, and a new Sheriff being made, the old Sheriff delivers back the Goods to the party, and Indorsa nulla bona upon the Writ of Fieri facias, Stiles Rep. 474.

So if the Officer shall return Cattle, estraped, which are dead, Leonard. Rep. pl. 203. 32 H. 6. 27.

If the Sheriff upon a Capias, where he hath sent his Warrant to the Bayliff of a Liberty to Arrest, which is done accordingly, and the Sheriff knowing it, notwithstanding return a Non est inventus; this Action lieth. But if he had returned that he had sent to the Bayliff, who had returned that he had Arrested him; this had been good and the Sheriff discharged, Croo. 1. last publisht 739.

In return
of a Juror.

So if the Sheriff shall Return a man of an Enquest, where he hath shewed him a Charter of Exemption, 18 H. 8. 5.

Franchise

If the Sheriff or other Officer shall break into my Franchise, or Liberty, to Execute his Writ without my leave; I may have this Action against him: But the Execution made is good, and may not be avoided, F. N. B. 95.

Sheriff.

So if the Sheriff return a Devasavit against me that am Executor, &c. and this is false: so

he Execute the next Writ De bonis propriis, if Re vera there were no Devastavit, Lib. Intr. 11. A. 11 H. 6. 37. B. Co. 5. 32. Co. 5. 32. So if he return Nulla bona upon a Fieri facias.

So if the Sheriff quash Efloines of the Plaintiff in a Replevit Erronice, without assent of the Justices, 20 Ass. 45. But if it be with their consent, false Judgment lieth, 26. Ass. pl. 45. Sheriff.

If the Sheriff return a Cepi Corpus, and have not the Body at the day; it seems the Plaintiff in the Suit may have this Action against him, Cro. 1. last published 460. 624. Yet see 7 H. 4. 31. Process. 120. Sheriff.

So if he return a Languidus, and not a Cepi Corpus, where the party is in health; the Plaintiff in the Suit may have this Action, 11 H. 6. 42. pl. 39. 2 H. 6. 5. A. 21 H. 6. 5. A.

So if the Sheriff that was before, hath returned one sufficient, which was not sufficient, by which that is present is charged with Illues; he may have this Action against the Quondam Sheriff, 19 H. 6. 38. per Paston.

If the Sheriff upon a Latitat Arrest a man, and then Bail him according to the Statute of 23 H. 6. and notwithstanding return Languidus in Prisona; it seems no Action will lie for this, Cro. 1. last published 852. Adjudged. And if he Rescue himself here; this Action will lie for the Escape, Cro. 1. last published 868.

So if the Sheriff shall make his precept to Execute a Process to one that is no Waylist of a Franchise, and by this the Suit is delayed; the Plaintiff in the Suit may have this Action, 38. Ass. 13. Sheriff.

If the Sheriff return a false Enquest of Office; no Action Sheriff.

Sheriff.

Action will lie against him, or against the Jury for this, *Coo.* 5. 32.

If the Sheriff in a Writ of false Judgment, returned there is no such thing, &c. this is Actionable, 44 *Ed.* 3. 3. pl. 11.

Bayliff of
a Fran-
chize.

And yet it is said, That no Action upon the Case shall lie against a Sheriff, for the taking of an insufficient Bail in this Action, for me, in a Suit I have against another man, *Hurton's Rep.* 120.

This Action will lie against a Bayliff of a Franchise, that Sues after the Plaint is removed, and for the discontinuing of his Plea, &c. *F. N. B.* 93. *E.* 14 *Ed.* 3. Action upon the Case 9.

So if he, after he have distrained the Defendants Goods at my Suit, he shall deliver back to the Defendant his Goods again, *F. N. B.* 93. *F.* 2 *Ed.* 3. 43.

If a Procurator, Somner, or Appariter, return me Summoned when it is not done, and by reason of this I am Excommunicated, &c. or Judgment of Excommunication is had against me; I may have this Action against him, *Bulstr.* 2. 264, 265. *Coo.* 12. 128. So if an Ordinary wrongfully Excommunicate me for any thing out of his Jurisdiction, *Doct. and Stud.* 118, 119.

Comissary

If a Commissary shall return a Jure patronatus, otherwise than it is found; this Action will lie for it, 22 *H.* 6. 30.

Escheator

If an Escheator had made a false Return of his Office against me; I might have had this Action. So if he make a Return of an Office where no Office is found, 21 *Ed.* 4. 23. 27. 9 *H.* 6. 60. *Regist. Orig.* 115. B. And so for any other such like Officer, *Croo.* 1. last publisht 512.

Evanc
thet

Sec. 5.

If any one shall take out an Execution in any Court

Court upon Record, in a Case where he knoweth the Record to be removed, by a Writ of Error, into another Court; the Party grieved hereby it seems may have this Action against him, Trin. 39 Eliz. Co. B. Willis and Strowd.

If any man shall procure a Nihil dicit to be entered in abuse of the Court, whereby the Defendant in the Action doth suffer Damage; this Action lieth, Croo. 1. last published 794.

It will lie in some Cases for Vindurance of a Suit by a remove of a Record by Attaint, Regist. Orig. 113. A.

If one, not Returned of a Jury, shall cause himself to be Sworn in the Name of one of the Jury, and give his verdict with the rest; either of the parties may have this Action against him, Mar. pl. 132.

If one shall remove a Plaint out of my Court of my Manor, without a cause; I may have this Action against him for this, 27 H. 6. 4.

This Action will lie against a Sheriff, Attorney, or his Deputy, or Clerk of the Court, for Imbezelling of my Record, by him that hath any special damage by it, 7 H. 4. 6. 19 H. 6. 29, 30.

If a Witness in any Court in a Cause there against me, shall take a false Oath in any Cause against me, whether he come in with, or without Process; no Action will lie for me against him for this, Croo. 1. last published 520. Co. 4. 14. M. 38, 39. Eliz. Co. B. Adjudged. Dampont's Case. Mich. 18 Jac. B. R. Eyres Case.

If I serve a Witness with a Subpena to appear in a Suit for me, and tender him his reasonable Charges, and he doth not appear, and I have prescience by it; I may have this Action against him, Stiles Regist. 10.

Witness, for a false Oath.

For not appearing.

By disturbance of an Officer in the doing of his Office.

This Action will lie against me that shall disturb an Officer in the doing of his Office, as in the Attaching, or Distraining of Goods, N. B. 101. F. And this lieth either for the Officer, or for the Plaintiff in the Suit, N. B. 102. F. And either of them may have it.

If one hinder an Officer in doing of Execution in his Office in my Suit; as where the Sheriff shall come to another mans House, where the Goods of the Defendant are, and the Door of the House being open, another man, not the Owner of the House, doth shut the Door, and keep them out; or the Owner of the House; or another man, shall convey away the Goods, and so prevent my Execution; I may have this Action against him: But if a man do so in his own House, or to prevent the Execution upon his own Goods, doth this; no Action will lie for this, Croo. 1. last published 308, 309. Coe. 5. 21. New B. of Entries. 13. Hill. 20 Jac. B. R. Woods Case. Adjudged.

If I have an Execution against the Goods of I. S. and he hath Goods in the House of K. L. and the Sheriff comes to the House, and tells K. L. what he is; and wherefore he comes, and desires him to open the doors to him, and he keeps him out, that he cannot do Execution; I may have this Action against K. L. for this, Coe. 5. 93. Seamaines Case.

If I have a Judgment against an Executor, and he shall secretly and fraudulently make away his Goods, to prevent my Execution; I may have this Action against him, M. 2. Car. 1. B. R. per Curiam.

If an Officer be coming to Arrest a man, or Attach his Goods at my Suit, and another man convey away the Goods, or the Person, so that the Officer cannot do his work; I may have this Action

on

on against him; and it seems may the Officer also, F. N. B. 102. 21 H. 7. 40. 18 Ed. 3. 3. See more, chap. 15. sect. 5, 6. throughout.

If a Replevin be duly lent to a Mayor, to command him to except of Pledges of A. the Plaintiff in a Replevin, and to deliver his Cattle, &c. And he instead of taking Pledges, takes Po-
ney for security; for this the party grieved may have this Action, Croo. 1. 322. Against
an Officer.

If a Bayliff shall Attach a Defendants Goods, and then deliver them back again to him; I may have this Action that am Plaintiff in the Suit, F. N. B. 92. Bayliff.

If an Officer Arrest me, and I offer him sufficient Bail, and he refuse it, and keep me in Prison afterwards; I may have this Action against him, and also against the Plaintiff, if he have any hand in it, Croo. 1. part 142. 212. 240. But no Action will lie against a Sheriff, or his Deputy, for taking Bail of a man in Prison upon a Latitat, Croo. 1. last published 67. 181.

If a Guardian that is to sue for an Infant, be false to him, plead a false Plea, vouched one that is not sufficient, or the like; the Infant may have this Action against him, Dyer 361. Kelw. 135. Guardian
of an In-
fant.
9 Ed. 4. Action, &c. 118.

If an Infant be bound for another, and a Stranger without his privity causeth a Suit to be commenced upon it, and procureth an Attorney to appear to it, and so Judgment is had against the Infant; he may have this Action for this practice, Croo. 2. 694.

If a Bayliff Arrest me without Warrant; I may perhaps have this Action, as well as of Tres-
pals for the false Imprisonment, Lanes Rep. 68.

If I serve one with a Prohibition to stay a Suit he hath against me, and he doth shew it in the vic,

I may have this Action against him, F. N. B. 92 E. Regist. Orig. 92.

If the Plaintiff shall proceed in his Court in a cause after it is removed, into another Court, F. N. B. 99.

If one shall proceed in a Court Christian, after a Prohibition delivered to him to stay a suit against me, I may have this Action against him. And so for any thing in a Spiritual or Ecclesiastical Court, of wrongful proceeding in the Judge, or of Misfeasance, Non-feasance, or falsity in a Minister of the Court, of unjust prosecution in the party, where any man hath a temporal damage by it; the party grieved may have this Action in a Temporal Court, to recover damages, Co. 12. 128. 47 H. 6. 8. 26 H. 8. 3. F. N. B. 92.

If one, to delay my suit, shall get, or use a Writ of Privilege, or Protection, or the like Writ, so as only to make a delay to my suit thereby; I may have this Action for the delay. So if an Essoiner cast an Essoine, and warrant it not at the day; the demandant that is hereby delayed may have this Action against him, Bro. Discret. 40. 11 H. 6. 8. F. N. B. 97. 20 H. 6. 10.

If I be going to distrain upon Land for my Rent, or Damage-feasant, and another to prevent me of my distress, shall drive the Cattle off the ground, Co. 5. 91. Finches Ley. 200. Hill. 20 Jac. By Ju. Hau.

If there be two suits against the same person in the Kings Bench, and I am Bail for him in one of them, but not in the other; And the Plaintiff in the other suit by his Misinformation, and some malicious and undue practices makes me chargeable, and brings me into trouble, as his Bail in that suit; for this wrong I may have this Action for my Remedy, as I may have for casting a

Vexatious
Suits.

Suit of an-
others
name.

Protection without cause, or procuring a false suit to be brought in anothers name; and in like cases; where a man knowingly and deceitfully shall bring another into any trouble, by mis-awarding of process, and the like, in a suit, by which another man is damanified, Croo. 1. last publisht 629. 17 Ed. 3. 51. 20 H. 6. 21, 27. Ass. 75.

If one sue another in my name without my privity; I may have this kind of Action against him, upon the Statute of 8 Eliz. chap. 2. And herein I shall recover Ten pound: And the party sued and grieves also, may recover by such a kind of Action as this, his treble damages, Croo. Rep. 2. 88.

For suing in anothers name Sect. 6.

If one sue me in anothers name, without his privity, though it be upon good cause; I may have this Action against him, if I have any special damage by it, March. Rep. pl. 76.

If two be Bail for another in the Kings Bench, and after Judgement had, the Principal doth render himself to discharge the Bail, and yet the Plaintiff (knowing this) or his Attozney, doth maliciously take out Execution, and vex either of them as Bail still; the party so vexed may have this Action, Croo. 2. 667.

Vexatious Suit.

If one by practice in London put in ill and false Bail to discharge the Bail in being; this may be actionable, Croo. 2. 602.

Deceit in giving Bail. False Return by a Sheriff.

If the Sheriff upon a Latitat at my suit arrest the Defendant, and at the day of appearance return Cepi corpus & paratum habeo, &c. and he hath Bailed him according to the Statute; no Action will lie for this, for it is justifiable if he plead it; but if he plead it not, the Action will lie, Cooo. 1. part last publisht. 460. 624.

But if one owe me Money on an Obligation, and

Escape.

and I deliver a Latitat to the Sheriff, and tell him my intent is to declare on that Obligation, and the Sheriff arrest him upon the Latitat, and then let him go, without taking of any reasonable Bail for his appearance according to the Statute; I may have this Action against the Sheriff, Cro. 1. last publisht. 729, 730.

If one sue another that came into a Court against me, and gave evidence that I was a common lyer, and so Recorded in the Star Chamber, and upon this, very small damages was given in a suit, wherein I did use this witness; this will not bare an Action, Brownl. 1. part 2.

Vexatious suits.

If one take out a Latitat against me, and arrest me, and refuse Bail, and carry me away into another Liberty, to charge me with another Action there; I may have this Action, Stiles Rep. 343.

It was said by Rolls Chief Justice, That this Action will lie against him that shall bring any vexatious suit against another, or for entering of Actions of a great value to force his adversary to put in a great Bail, where he hath but small cause of Action, Stiles Rep.

If one hath a verdict against me in a cause, and he, to the end I may be in custody, till he have judgment and execution, and for no other cause, arrest me; I may have this Action for my remedy, Stiles Rep. 211.

This will lie against my Attorney for taking out a Fieri facias in my Adversaries suit, and causing it to be executed against his Trust, &c. Stiles Rep. 426. See chap. 13. sect. 5. throughout.

If the Sheriff be to take the person or Goods of another for me, and I direct him to the person or Goods of another by mistake, or purposely, and the Sheriff

him, the Sheriff doth thereupon take them, and he afterwards sued for it (as he may be) it seems he may have this Action against me for this mis-informacion, Lanes Rep. 52.

If I have arrested a man upon a Latitat, and he is not in Bail, and appear, and I have Judgement against him, and he, to discharge his Bail, doth tender himself in Court, and is committed to the Marshal, and he suffer him to escape; I may have this Action against the Marshal, Stiles Rep. 330.

If one be arrested upon a Latitat at my suit, and delivered over by the Sheriff that arrested him, to the next Sheriff; and he suffer him to escape; I may have this Action against this next Sheriff, Croo. 2. 380.

If one be arrested at my suit upon a Bill of Middlesex, and the Bailiffs suffer him to escape, and I, by reason thereof, am like to lose my debt; this Action may lie in this Case: But if he be violently rescued and taken from the Bailiffs, before he come to the Gaol; no Action will lie against the Sheriff, or them, for this; And so where it is upon other mean process; but the Plaintiff may have this Action against the Rescuers: And therefore upon such a process the Rescous is a good return, and that he was not found after in his Bailiwick; and upon this process shall go against the Rescuers: But if it were upon an Execution it is otherwise, for there the Sheriff may take the posse comitatus, to keep him, and therefore when he hath him, he must look to him: And so if the prisoner be once in the Gaol, the Sheriff at his peril must keep him, and a Rescous from thence is no excuse to him. So upon a Cap. ad Stat. or Cap. utlagatum after Judgement; such an excuse is no excuse either against the

King;

By Rescous
or escape,
Sect. 7.

King, Croo. 2. 380, 419, 485. And yet in all Cases where the arrest is unlawful, the Escape or Rescue cannot be actionable, Croo. 2. 485. Trin. 14 Jac. Probe and Maines Case. Mich. 2. Car. 1. Lemoson and Dicksons Case.

If one arrested upon a Latitat at my suit shall be rescued by any man, out of the hands of the Sheriff, his Deputy, his Bailiffs, or the Bailiffs of a Franchise, or his Deputies hands; I may have this Action against the Rescuers, Croo. 2. 241, 242. So if the Sheriff take a man in Execution upon a Cap. ad Stat. and suffer him to be rescued, and escape, Godb. Rep. 145. Herleys Rep. 95. But upon a mean Process it seems to be otherwise. And if it be upon an Execution after Judgement; the Action will not lie for the Plaintiff against the party, but against the Sheriff, Godb. pl. 145. Herleys Rep. 95.

If A. be sued in the Kings Bench by B. for Three hundred pound Debt, and is taken upon a Latitat, and C. rescue him from his imprisonment, B. in this case, by this Action shall recover all his Debt in damages, let A. be never so sufficient, Adjudged. Affirm'd in Error. 7 Jac. Kent and Keileway. Scaccario. Jenk. Century. 7 Case 10.

An Action of the case will not lie against a Sheriff, for suffering a Prisoner arrested upon a Latitat, or other mean process to escape, as it will for suffering a man arrested upon a Capias ad satisfaciend. or Capias utlagatum, for it will be a good plea in that case to say, that as he was bringing the prisoner to Gaol, that he was rescued from him, and that he hath returned the Rescuers, Bulstr. 3. 198. Fitz. N. B. 102. But if the Sheriff shall bring him into the Gaol, and thence suffer him to escape; for this

this it will lie, Bulstr. 3, 198. F. N. B. 102. And the Plaintiff in the suit in the first case may have this Action against the Rescuers, Bulstr. 3, 200. 201. See more, chap. 15. sect. 5. throughout.

If a man take a false Oath against me in a pro-
 per Court, whether he come with, or without pro-
 cess in any suit of Law there, or he come in as a
 witness upon an Affidav. no Action will lie for this,
 as some say; albeit I be prejudiced by it, for it is
 an Act of the Court, and in a course of Justice,
 M. 38, 39 Eliz. Co. B. Adjudged. Damparts Case.
 Mich. 18 Jac. B. R. Eyres case. Co. 4, 14. Owens.
 Rep. 158. Dyer. 243. But see the contrary in Co.
 12, 123. where it is said to be resolved; That for
 Perjury by which damages accrue to me, I may
 have this Action; and therefore for Perjury in a
 cause, as a witness, or otherwise upon an Affidav. as
 where one as a pledge did affirm in his Oath, that
 he could spend Forty shillings a year, and upon re-
 examination confessed it false; and where by the
 Affidav. a man is arrested and molested by process
 of contempt, or other damage follow to me by it
 against whom the Oath is; I may have this Action,
 and especially there where his Oath is voluntary.
 Cro. 2, 602. And so it seems the Law is, and yet
 Adjudged otherwise, See it Cro. 1. last publisht.
 521. If a Summoner return one summoned, and
 thereupon he is pronounced Contumax, and after-
 wards Excommunicated; he may have this Action
 for his damage, albeit the thing be in a Spiritual
 Court, Co. 12. 128. And so for any thing in a
 Court Ecclesiastical of wrongful proceeding, of the
 Judge, or non-feasance, or mis-feasance, or falsity
 of the Minister, or by unjust prosecution of the
 party, the party grieved shall recover damages in
 the Temporal Court by this Action.

About an
 Oath.
 c. 8.

Proceed-
 ing in a
 spiritual
 Court.

If

For an unjust prosecution in a Sessions about a Bastard Child.

If one endeavour to charge me at Quarter-Sessions to be reputed Father of a Bastard-child, and procure an Order to be made against me, as the reputed Father to keep the child, and all maliciously and unjustly; I may have this Action for this: But not for an endeavour to do it without an Order, Bullstr. 1. part 343. *

About some other offence.

If one procure another falsely and maliciously, to indict me, or cause me to be arrested, imprisoned, bound over, or arraigned for an offence, without any colour, or cause of suspicion; I may have this Action against him, Mich. 4 Jac. B. R. Marshams Case Adjudged. Trin. 17 Jac. B. R. Olivers Case. M. 7 Jac. B. R. Gambels Case.

To bind to the good behaviour upon Articles.

If one exhibit Articles to a Master of the Chancery, to have the good Behaviour, and then waive that course, and after sue in the Kings Bench, and hath process thence upon the Articles in Chancery; for this latter Act, I may have this Action, Godb. Rep. pl. 333. Mich. 11 Jac. Co. B. Bundley.

CHAP. XI.

Of an Action upon the Case against a Hundred upon a Robbery, where it will lie, or not.

If I be robbed in my Travel; I may recover my loss in damages from the Hundred, by an Action in the nature of an Action of Trespass on the Case, upon the Statutes of 13 Ed. 1 chap. 1. 2. and 28 Ed. 3. chap. 11. 27 Eliz. chap. 13. But for the further opening hereof, these things are to be known,

1. That if the Money be taken out of a Portmantle,



mantle, carryed by the Post-boy, and the owners hand upon the end of the Post-mantle; this is a Robbery of the owner; so is the Robbery of the Servant in the Masters presence, Stiles Rep. 318, 319.

2. That this Action may be brought by Bill, or by Original, Stiles Rep. 215.

3. That wheresoever this Action is maintainable, there must be these things in the Case; or thus it must be,

1. The party robbed must with all the speed he can give notice thereof to the Hundred, and make Hue and Cry after the Thieves at the next Village (be it in the same, or in another Hundred, or County) and to some of the Inhabitants dwelling in, or near the place where the thing is done, Noys Rep. 155. And herein it is most safe for him to give notice to the Inhabitants on that side which way the Thieves do flye, and to give notice to many of the Neighbourhood. And yet see Goldsb. 56, 62. Croo. 1. part 29, 30, 275. that it seems this is not needful, See for this, Croo. 1. 29. And if the Robbery be in Devissis Hundredorum, there he may give notice to either of them, and it will be well enough, Croo. 2. 675. And notice given in the Hundred five miles from the place, is good enough, March. Rep. 11. And by the Chief Justice, notice given at one Town, and Hue and Cry at another Town is good, March. Rep. 11. And notice given to the next Village forward in the Road, is good, although it be in another Hundred, and although there be another Village a little nearer in the same Hundred, Noys Rep. 52. And if one ask him, what ails him, and he shall say, he is robbed, this is a good notice, Noys Rep. 155.

Notice.

And

And if the Hundred of A. and B. be adjoining, and the Robbery is done in the utmost confines of A. and the party not knowing the Countrey, goes to B. and there gives notice; this is sufficient, Noys Rep. 155. See Leonards Rep. pl. 72.

2. That he must bring his Action against the Hundred for it within a year after the Robbery is done, but not till Forty dayes after the Robbery is past.

3. That he must within Twenty dayes next before the Action brought, and Teste of the Original Writ be examined upon Oath, before one of the next Justices of the Peace of the County in, or near the Hundred, whether he knoweth any of the parties that robbed him; and if he doth know any of them, then before the Action brought, he must be bound by Recognizance before that Justice, effectually to prosecute them: And this Oath the Servant that is robbed of his Masters Money, may, and must himself take, and not the Master, if he be not there; and the Master may bring the Action, but he is not to be sworn, Croo. Rep. 3. part 26, 244. Croo. 1. 154, 155, 245. Croo. 1. last published. 142. And in the taking of his Oath, let him swear he doth not know the parties that robbed him, nor any of them, Noys Rep. 21. pl. 456.

4. That the Robbery must be done in the day time, for if it be done after the night is come, and before the day (as some say) no Action will lie for it, Yet see Goldsb. 56. pl. 10. 61, 70. Croo. 1. last published. 270. Croo. 2, 206. If after day light, before Sun rising, and whiles day light is after Sun set, or at any time of the night, wherein men use to travel; the Hundred shall be charged.

5. That the Robbery must be upon the High-way;

way; for this Action will not lie for relief upon a Robbery done in my House upon me.

6. That that the Felons must be fled; for if any of them be apprehended, although it be by the party himself that is robbed; this Action will not lie: But pursuit after, without taking of them, will not excuse the Hundred.

7. That it must be a Robbery on the person; for if a man have tyed his Horse to a Hedge, and be gone aside to untruss a point, and the while the Thief take away his Cloak-bag; or a Carrier be behind his Horses, and not near them, and his packs be robbed before he come to them; this Action will not lie for this.

8. That if my Servant, or Carrier be robbed of my Money, or Goods, I my self may bring the Action; either Master or Servant may bring the Action, and he that brings it first shall prevent the other of bringing of it: And my Servant, or the Carrier may be examined upon Oath; and if the Carrier will not be examined, I have no remedy; and in these cases a man may be a witness in his own Case; but a man must make a clear proof of it, that he, or the Carrier had so much Goods, or such Money as he pretends to lose, Croo. 2, 224. Latch. Rep. 137.

9. That in the Case of a Carrier, if he be robbed of my Goods, either he, or I may sue, unless the Case be such, as he is not answerable for the loss; as where he undertook the charge of them upon an especial agreement, to keep them as his own, or the like, Croo. 2, 224.

10. That if one of the Thieves be not apprehended within Forty dayes, it seems the Hundred is chargeable.

Z

11. That

11. That if the Robbery be made between two Hundreds, both the Hundreds and the Franchizes within them shall be chargeable for it.

12. That if the Charge light upon any particular Persons within the Hundred, they are not to be Relieved by way of Contribution from the whole Hundred: But the Justices of the Peace are to order it upon the whole Hundred, when the Execution comes.

13. That if any Default have been in the following of the Hue and Cry, by any other Hundred, the Hundred charged with the Robbery may recover half their Damage again of this Hundred for their default.

14. That although the Party Robbed be negligent to pursue, and refuse to lend his Horse to make Hue and Cry, so that convenient notice might be given to the Hundred; this will not prejudice his Action.

15. That albeit the Party Robbed do not know the Thieves at the time, and doth take his Oath that he doth not know them, and after he come to know them, and confesses it, yet this will not prejudice his Action.

16. That Notice given in the Hundred, albeit it be five Miles from the Place of Robbery, is sufficient; But if it be in another Hundred, and there only, it is doubtful, Goldsb. page 56. 58.

17. That notice given in one Town, and Hue and Cry made in another Town, is good enough.

18. That he that is Servant to, or Receiver of another mans Money, may in Case where he is Robbed, bring this Action as well as the Master.

19. That if a Carriers Son, or servant conspire

to Rob the Carrier, and do Rob him, the Carrier, not being privy to the Conspiracy, the Carrier may have his Action against the Hundred upon the Statute. But this Master is to be urged upon the Jury upon the Trial of Mitigation of Damages, per Chief Justice Rolls; see for all these things, Croo. 7. 7. Plow. 128. Dyer 370. In March. Rep. 10. pl. 28. Goldsb. 24. pl. 3. Brownl. 1. part 155. Trin. 21 Jac. Fosters Case. Croo. 1. 29. 29.

20. That if the Master, where the servant, his Receiver, or Friend used by him, is Robbed, shall not be bound to take his Oath, that he knoweth none of the Thieves, but the servant is to do it: And the Master may bring the Action, and bring the servant as a witness, Croo. 1. 29. Golds. pa. 24. March. 11. Sir John Comptons Case. or (as it seems) that the servant may bring the Action, Goldsb. 24.

21. That if a Robbery be committed (as before is said) in the Morning before day, or the Evening after day, in any time of the Night, in which men use commonly to Travel, it is said the Hundred shall be answerable for it, but if it be at twelve, one, two, or three of the Clock in the Night, at which time every one is intended to be in his Bed, the Hundred shall not be charged with it, Croo. 1. last published 207. Croo. 2. 106. Brownl. page 70. Leonards Rep. pl. 72. It is clear for a Robbery done before Sun rising and after Setting; by clear day light; the Action lieth, but in Crepusculo, and in the night it seems otherwise, Stiles 233.

22. What if the Robbery be done on the Sunday morning, in time of Divine service, if Hue and Cry be made, and all the rest done, as it ought to be notwithstanding the time, the Hundred will be charged

ged for the Money, to the party robbed, Croo. 4. 496.

23. That if a Stranger make Hue and Cry, or pursue, so that the Thieves are taken, without any thing done by the Hundred, it seems the Hundred is discharged; but if there were more than one of them, and one only is taken, Quere Goldsb.

24. That if the party robbed dwell within the Shire or Hundred, where the Robbery is done, it seems the Hundred is not to be Charged for it, Goldsb. page 55.

25. It seems the party Robbed himself is not bound to send out any Hue and Cry, Goldsb. pag. 56.

60. For the fresh suit is to be made by the Hundred; and if the man be slain, or bound two or three days, that he cannot make fresh suit, yet he shall have relief by this Statute, Goldsb. page 60, 61.

26. That if one have Money, and the Thieves take him in one Hundred, and carry him into another, and there kill him; this shall not be a Robbery in the first, but in the second Hundred; As if they take a Carrier in one Hundred and lead him, his Horse and Packs into another Hundred, and there Rob him: But if the Carrier lead the Horse himself into the other Hundred; there the Robbery shall be said to be in the last Hundred, Goldsb. page 86.

27. That in the account of a Year, upon the Statute of Hue and Cry, the day of the Robbery is Excluded, Hobb. 184.

28. That albeit there be a negligence in him that is Robbed to pursue the Robbers, or he refuse to lend his Horse to make Hue and Cry; this will not excuse the Hundred, if convenient Notice be given to the Hundred, Noys Rep. 155.

29. That if the party Robbed know not the Robbers at the time of the Robbery, and so take his

his Oath, albeit he come after to know them; this will not take away his Action.

30. That if the party Robbed knows the Robbers, he shall be bound to prosecute, and yet also have this Action against the Hundred, if the Robbers be not taken, Noys Rep. 155.

31. That if a Carrier be Robbed, and his Man, or his Son have a hand in it; yet the Carrier may have this Action against the Hundred, but happily he may have the less damages if it be urged, Stiles Rep. 427.

32. That if a man come to dwell in the Hundred after the Robbery, it seems he is to be charged as of the Hundred. And if a Hundredor sell, or lease his Land after the Robbery, yet this Land will be chargeable, Noys Rep. 155. See more of this Yelverton. Rep. 16. Croo. 1. 245. Croo. 2. 183. 224. 351. Golds. page 58. Noys Rep. 125. Owens Rep. 7. Stiles Rep. 215. 472.

CHAP. XII.

Of an Action upon the Case for Doing, not Doing, or Mis-doing in other Case, and where it will lie, or not.

This Action doth sometimes arise, and is given by Law in many other Cases; besides what are mentioned in the foregoing Chapters; And in some of them for doing of what a man should not do; in others, for not doing what he ought, and for the ill doing of what a man doth, or ought to do. As for example.

Sect. 1.

Nuisance
in House,
W. y
Light, &c.

If one disturb me in my way to my House, or Land, by stopping, or straitning of it, or stop, or turn my water, coming to my House; Mill, or Ground, or my Light to my House; or if one stop a Ditch, or River, or set up Flood-gates, so as to make the Water over-flow, and drown my Ground adjoining; I may have this Action for it. But if a man stop or turn water only to amend his Banks, or Mills, having by Custom and use done it; this is justifiable. But for this, see chap. 5. sect. 1, 2, 3, &c. Co. 4. 86. 9. 50. Dyer 320.

Stopping
water.

If one stop a stream of Water, and put it out of its old course, and by that means my Ground is drowned; I may have this Action against him, New B. of Entries. f. 18. Dyer 248.

So if one disturb me in my Office, or Isle, Walk, Fold, or Foldage, or Warring place, or in my Franchise, or Liberty, as Lect, and the like; or in any other profit appendens; I may have this Action, Co. 4. 89. and 5. 1. &c. Dyer 250. 320. 10 H. 7. 21. 21 H. 7. 29. 27 H. 8. 31. 27 H. 6. 27. But see for this, chap. 5. sect. 8, 9.

Distur-
bance in
an Isle,
Seat, &c.

If I be disturbed in my Isle, Seat, or proceeding in a Seat, Place, or Chappel, or in myburying-place in any Church, which I have had, time out of mind, as belonging to my ancient House by prescription, and I be disturbed therein by the Parson, or any other; I may have remedy by this Action, as I may for a disturbance in my Common way, Walk, Foldage, Fair, Market, Toll, Office, or Court-keeping, or other such like thing, Cro. 2. 48. 123. 180. 263. 605, 606. Bulstr. 1. part 47. 69. 7. part 14. 129. Co. 5. 76. 1. part of Inst. 56 13 H. 7. 26. Noys Rep. 78. Brownl. 1. part 197. 231. Co. Rep. 12. 105. Bridg. Rep. 4. Bendl. 89.

So if any thing be done to the prejudice of the Church-way, or High-way, by which I have any special damage more than others; I may have this Action against him that did it, See for this. chap. 5. throughout.

So if one disturb me in my Common, that I cannot have it as liberally, as formerly I have had, I may have this Action, See for this. chap. 5. sect.

4. 5.

If one inclose Land, which should lie open, in Inclosures a Mannor, by which the Commoners have not enough for to Common their Cattle; to eat up the Common so much, that the Commoners have not enough; in this Case every Commoner may have this Action against him, Coe. 9. 113. F. N. B. 145. 21 H. 7. 40.

If the Inhabitants of a Parish have a water-warring-place by prescription, and be disturbed in it; each of them (as it seems) may have this Action for such disturbance, Finches Ley. 187. 27 H. 8. 27.

If one dig a Pit in a place where I have Common, by occasion whereof my Beast there going, falls in it, and is hurt; I may have this Action, Coe. 2. part 158. See chap. 15. sect. 6. case 25.

If one do me any wrong, in, or about a Suit in Law; as if one shall Sue for me without Warrant of Attorney, make a false Return, Wex me with unjust Suits, Personate me, and do, and suffer somewhat to be done therein to my prejudice, or the like; I may have this Action. But for this, see chap. 10. throughout.

So if one procure another maliciously to Sued me for my Offence, and Causelessly Wex me thereby; I may have this Action, See for this, chap. 10. throughout. And Conspiracy, in my

other Book of Action upon the Case.

If one Arrest me, and bring me before a Justice of Peace, under pretence of some Crime, without any probable cause at all, and I am Indicted, and Acquitted of it; I may have this Action, Trin. 7 Jac. B. R. Olivers Case. And if a Justice of Peace shall send a Warrant for me, and Arreſt me upon some pretended Felony, or other Crime without any Complaint, or Information, or cause at all, but out of Malice; I may have this Action against him, Croo. 1. last published 130.

If A. and B. conspire, that B. shall begin a Suit against me, and lay an Action in another County, and not that wherein I dwell, and follow it till I be Out-lawed, to the Intent I may make a forfeiture of all my Goods, Lanes Rep. 49.

Suits in
Law.

If any Attorney or Officer of any Court shall do any thing in, or about a Suit of mine in any Court more then he hath Warrant or Authority from me to do, or not do his Duty, or deal deceitfully with me, about any Cause, I may have remedy by this Action, 20 H. 6. 4. 25. 3 H. 7. 14. Broo. Action, &c. 117 108. 11 H. 6. 18. F. N. B. 96, 97. 100. 19 H. 6. 44. But see for this cha. 6. ch. 10. throughout.

Neglect,
deceit in
in an Of-
ficer.

So for an Attorney, or Officer, that shall do any thing besides, or contrary to his trust, or shall neglect his trust, and do not his Office.

If one leavy a Fine, suffer a Recovery, acknowledge a Judgment, enter a Suit, a Bail, or a Recognizance in my Name, by which I am Dam-nified; I may have this Action against him, F. N. B. 98. 100. 19 H. 6. 44. See chap. 6. See chap. 15. sect. 6. case 28.

Vexatious
suits.

If I enter into a Statute, to pay Money at a day, and pay it, and after another get the Statute, and sue

sue it against me; I may have this Action: And so in any case, if any man sue me in anothers name, without his privy, F. N. B. 96, 100.

If one sue me in another mans name, without his privy, upon a Statute, Bond, or any other good cause; I may have this Action against him, F. N. B. 96, 97, 100. And if by this means my other Creditors fall upon me, damages shall be increased, March. Rep. 47.

Suit in anothers name, without his privy.

If one procure another to sue, and thereby brey me without cause; I may have this Action against the procurer, F. N. B. 98, 116.

If I be bound to appear in a Court at a day, and before, or against the day, one cause me to be arrested of purpose and malice, to prevent my appearance, and cause a forfeiture of my Bond; I may have this Action against him, 7 H. 6, 45. Fitz. 4. For Suits. See more chap. 15. sect. 6. case 11, 18.

If one shall counterfeit a Letter in my name, and deliver it to my Servant, and the effect of it is, to perswade him to deliver the counterfeiter of it in Money, and my servant doth so; I may for this deceit have this Action against the counterfeiter of it, Adjudged. Trin. 7 Jac. B. R. Traevis Case. See more of this chap. 6. sect. 3.

Deceit.

If one deal deceitfully with me in a bargain, by false weights, measures, wares, or selling what is not his own, or the like; I may have this Action, See for this chap. 4. sect. 8. chap. 6. sect. 2, 3.

Deceit in Bargaining. Sect 3. Breach. of Trust

And if a man, being trusted by me, shall not perform the trust I have put upon him; as if I retain an Attorney to take an Obligation in my name, and he take it in his own, 20 H. 6, 25. See for this chap. 6. sect. 8. chap. 7. sect. 3, 4.

So if one hinder me of my remedy for my debt,

Hinder-
rance of
me in my
remedy
for a
wrong.
Abuse of
loan-
goods.
Burning a
House.

or duty; as distress, execution, and the like. But for this, see chap. 10. sect. 3, 4.

If one hire a House of mine, and abuse, and hurt him; I may have this Action, Brownl. and Godsb. 17.

If a sudden fire happen by accident in another House near to mine, whereby my House is burned also; I cannot have Action for this: But if it be by any negligence of him, his Wife, Servant, or Children, or Hostler; I may have this Action: And so it is said, if the fire be by one that comes into his House, or Hostery, by his leave, or knowledge: But if any one come against his Will, or unknown to him, by whose means the House is burned, and thereby my House also; I may not have this Action against him, 42 Aff. p. 8. Action, &c. 43. 2 H. 4, 18. Action, &c. 25. 31 H. 3. 6. Doble. 31.

If a man shoot at a Fowl standing in his own House, and thereby fire his own House, and mine also near to it; I may have this Action against him, Croo. 1. last publisht. 10. part 5.

If my Lessee at will by negligence suffer the Houseing he holdeth of me, to be burnt; I may not have this Action against him, Croo. 1. last publisht 777, 784. Adjudged. As I may against him that keepeth not well his fire, by which my House is burned, being near to his, 2 H. 47, 18. 8 Ed. 4, 19. pl. 30. Bendloes. 153. But in the first case, if it were voluntary, I may have perhaps some other, or this Action: And although it be done by his servant, or that his own House be burnt also, this will not excuse him that occasioneth the firing of his Neighbours House, 2 H. 4, 18. Doct. and Stud. 137. 33 H. 6. 1. Lib. Intr. 8. A. sect. 1. But there
mu

must be some negligence in the case of him, or some of his Family, 28 H. 6, 7. Lib. Intr. 8. A. sect. 1, 2. But if it be done and occasioned by a stranger out of malice, or suddenly, no man can tell how; he is not chargeable for his Neighbours House that is burnt by the burning of his own House, 42. Ass. 8. 2 H. 4, 18. 33 H. 6, 1.

If my Servant bying fire in the street, and thereby burn my House; it is said not actionable, Quere. But in this thing it seems the Law is general, that if my Neighbour, and his Servant, or any other that shall come into his House, by his good will, or agreement, shall wilfully fire his, and thereby my House; I may have this Action: But if it be done against his will, no Action lieth, 2 H. 4, 18. Old Book of Entries fol. 8. See after sect. 4. chap. 15. sect. 6. case 7. 15.

If one threaten to take away my Goods, unless I will give him Ten pounds, and I do so upon this, for fear, I may have this Action, 7 Ed. 4, 2. So if one threaten my Tenants at will, so that thereby they depart off my Land, but it must be a threatening of life, or member; for a threatening by a man, of a Suit for wrong done to them by me, is not actionable: So if one had beaten a mans Willains heretofore, and thereby they had departed from off his Land. But if one take and detain my Cattle, till I pay him Twenty pounds, or threaten to beat me till I do so; I must have another, and not this Action, 9 H. 7, 8. 21 H. 6, 29. 9 H. 6. Action, See. 21. 7 Ed. 4, 21. Bar. 91.

For
threat-
ning of
me, my
wife, or
servants,
whereby
&c.

If one threaten me, my Wife, Servants, or Children, that he, or some other, will do us some hurt, and he, or that other doth after lie in wait to do it, so that by this means we are put in so much fear,

fear, that we dare not follow our business; as where my Servant by this means dares not go abroad about his work, or departs out of my service, whereby I have any special damage; I may have this Action: But it will not lie for bare threatening onely, without lying in wait, and loss by it, *Coo. 7. 1. Kelw. 40. 9 H. 7. 7. Bendl. 15. 7. See chap. 15. sect. 6. case 3, 8, 27.*

For beating, or laming one, whereby his marriage is lost.

Sect. 4.

If one beat, and lame my Son and Heir to Land, that is his Apprentice; I can have no Action for this under pretence that it mars his match, and hinders his preferment, *Leonards Rep. pl. 63. Gray. and Jesses case, Adjudged. But I might have had an Action against him that should have taken away my Son and Heir, and marry him: But if the Son marry of himself, or a Stranger procure him to marry one; no Action lieth for this, Croo. 1. last published. 55.*

Wrong to my person. Threatning.

If any one lie in wait to kill me, or take me as his Villain, that I dare not go about my business; I may have this Action against him, *2 Ed. 4. 5. 17 Ed. 4. 4. Regist. Orig. 103, 102. 13 H. 6, 27. 2 H. 7, 12. pl. 15. Coo. 4, 18. Dyer. 258. Jenkins Cent. 4. case 11.*

Lessor & Lessee.

So if one threaten by word, or writing, to kill, maim, or beat me, if I come out of my House, *17 Ed. 3, 4. 10 H. 4, 6. Lib. Intr. 661. B. sect. 1, 2.*

If the Lessor sue me that am Executor, of the Lessee for years, or my Executors after me of the term; I, or they may have this Action against him, *Fitz. 92. G. Coo. 4, 94. or an ejectio firmæ.*

Expulsion by the Lessor.

If the Lessee keep out his Lessor, coming to view the House, if any waste be done; the Lessor may have this Action against him, *Hill. 20 Jac. Adjudged. B. R. Croo. 2, 478.*

If a Lessee for life make a Lease for years, and this Lessee for years commits waste, for which the Lessee for life is punished; in this Case he may have this Action against the Lessee for years, and recover as much as the Lessor doth, or may recover of him, Pasche. 38 Eliz. B. R. Genmies case.

Waste by
the Lessee
Assignes.

So if the Lessee for years of a House, lease it for part of the time, and that time expire, and the Lessee continue in possession, and pull down part of the House, the first Lessee may have this Action, Adjudged. Trin. 6. Car. 1. B. R.

If a Tenant at Will of a House, or Land, or his Servant, or his Lessee at will, which is his Servant, do voluntarily burn the House, or cut down the Trees; the first Lessor may have remedy by this Action, Mich. 17 Jac. B. R. But if by negligence he suffer the House to be burnt, or Trees cut down; no Action will lie for this. But some have held in the first Case, that a general Action of Trespass lieth rather, for by this waste; the will is determined. But it is now resolved, that in case of a Lease made by the Lessee for life or years, who is hereby made liable to an Action of waste; that in this case the second Lessor may have a general Action of Trespass, or this Action, at his Election, Coob. 5, 13. Dyer. 122. Lit. 15 Ed. 4. 20. 14 H. 8, 12. 2 H. 7. 11. See Croo. 1, 135. and Croo. 1. last published. 777, 784. where it is adjudged, that for a negligent burning of the House by a Tenant at will, no more than for not repairing will this Action lie by him in reversion. But if he voluntarily pull down, or burn the House, or cut down Trees; for this a general Action of Trespass will lie as against my Shepherd that kills my Sheep.

For waste
made by
a Tenant
at will.
Burning a
House.

Trespass:

This Action will lie against him that disturbs

bech

For disturbing
one in doing
my service, or
taking a distress.
Retaining
another
mans Servant.
Bar in this
Action.
Sect 5.

disturbeth my Servant in gathering of my Tithes, Toll, or in his doing of any other service, Fitz. 94. 19. R. 2. Action, &c. 52. 9 H. 6, 45. Conat. 18.

If any one shall do me wrong in my Servants service, as by taking him away, or by inticing him away out of my service, or by retaining of him from me; I may have this Action, 9 R. 2. Action upon the Case. 52, 11 H. 4, 22. 21 H. 6, 9. And to say he is not his Servant, is a good Bar in such an Action, 20 H. 7, 4 pl. 13. Fincux, so to say it was his Wife, Farmer, Companion, &c. 7 R. 2. Traverse. 210 37 H. 6, 7 pl. 13.

For loss
of his
Servants
service.

So if one beat my Servant, or hurt him, or imprison, or maim, or threaten him onely, if by this I lose his service, albeit he be but my Servant at his own pleasure; I may have this Action for my relief; but this must be in the Case, that I thereby lost his service, 21 H. 6, 9. Co. 9, 113, 18 Ed. 4. 27. 28 H. 6, 14. 21 H. 7, 71. Regist. Orig. 94. B. 102. A. N. B. 91. Lib. Intr. 613. B. sect. 19. 674. C. sect. 1. 19 H. 6, 35. pl. 73. 7 H. 8. 189. pl. 4.

Smith cly
a Horse.

If a Master send his Servant to pay Money on a Bond, or to do some important business, and the man calls at a Smith to shew his Horse, and he lames him, by which he was not able to come time enough to pay the Money, or do the business; in this Case the Master and Man both may each of them have this Action against the Smith, Bullstr. 2. part 334.

So if a man dig a Pit in the High way, and in such a case my Servant fall, and is hurt, and so not able to do his work in time, Bullstr. 2. part. 334. Broo. Action, &c. 24. Old B. of Entries. fol. 2, 46 Ed. 3, 19. Stiles Rep. 335.

Chappel.

This Action will lie for disturbing men to come
to

to my Chappell with offerings, 19 R. 2. Action upon the Case. 52.

So for hindring people to come to my Fair, Fair, disturbance in Toll. whereby I lose my Toll, &c. some think it may lie for this.

So I may have this Action against him that shall disturb Customers to come to my Mill, where I have an ancient Mill, and by prescription the Custom of Tenants, 11 H. 4. 47. 41 Ed. 3. 24. 29 Ed. 3. 18. 9 H. 6. 43. Mill grinding, disturbance therein.

So for erecting of a new Mill to my prejudice, in my profit; to my ancient Mill, by the diversion of the water that comes to my Mill. Lib. Intr. B. sect. 2. D. sect. 1. But if I have a Mill in B. and another sets up a Mill there, by which I lose the profit of my Mill, by the going of others to this new Mill; no Action will lie for this, Broo. sect. 46. 22 H. 6. 15. 11 H. 4. 47.

If one remove a meer stone anciently fixed, by which I have prejudice; I may have this Action, albeit I be a Tenant in Common, 1 H. 1. Old Lib. Intr. 9 C. sect. 1. About a meer stone.

If one grant me to have Hay or Straw in his House for my two kine, all the Winter long, during my life, and I be disturbed in it; I may have this Action, Fitz. Action. 17. Hay and Straw.

If one put Cats in my Warren amongst my Conies. Conies; it seems I may have this Action for it, Mich. 2 Jac. B. R. by two Justices, Old B. of Entries. fol 13. Conies.

But if Conies or Pigeons come into another mans Corn; no Action will lie for this, for that it cannot be known whose they are, Croo. 1. 282.

If a Statute forbids a thing without a penalty, and it be broken, and I have any special loss by it; some Upon breach of a Statute.

some say I may have this Action for it, but it must be taken per Rege, &c. Trin. 3 Jac. B. R. F. N. B. 90.

Distress in the Highway.

So if one distrains my Cattle in the Kings highway, contrary to the Statute of Marlebridge.

So if the Court-Martialle holds plea where it is forbidden; or the Officer of a Spiritual Court refuseth to deliver a Libel upon the 2 H. 5. the party grieved may have this Action, Co. 12, 100. and see Cro. 2, 133.

About a Trade.

This Action will lie for using the Trade of a Dyer in R. without licence of the Arch-bishop of York, Regist. Orig. 105. Co. 8, 125.

If one hath the sole Trade of Baking in a Town by prescription, and another sets up a Bake-house there, and takes away his Trade; he may have this Action, Co. 8, 125.

Monopoly.

The King grants to A. the sole making of playing Cards; he may not have this Action against another that shall use the Trade, for the Kings grant is void, Co. 11, 86. See chap. 15. sect. 6. case 10. out of Co. 11, 84. Noys Rep. 173, 174. chap. 15. sect. 6. case 38.

For retaining my Servant.

So it will not lie against one that doth retain a Servant of mine that is departed from me without leave, unless he had a hand in the procurement of him to leave my service, Leonards Rep. pl. 324.

Disturbance in a Leet.

If one distrain another to come to his Leet, that ought to come to my Leet; I may have this Action against him.

Upon an Escape or Rescue.

sect. 6.

If a Prisoner in prison at my Suit escape by the Sheriff or Gaolers means, either by his negligence, or wilfulness; I may have this Action against the Sheriff, or Gaoler, as the case is: And if he get away by Rescue against the Gaolers will;

in

in this Case also I may have this Action against the Goaler: And if he be forced to make me amends for my damage; he may have this Action against the Prisoner for his Counter-remedy, 7 H. 4. 14. Broo. 34. See for this chap. 10. But if a Prisoner escape against their will, and be re-taken upon a fresh pursuit, in the same, or another County, before Action brought by the Plaintiff against the Sheriff or Goaler: no Action will lie now against them: And if the Plaintiffs Action be brought before the re-taking, the Sheriff may either take and keep him in Execution, or have this Action, Coo. 3. 35.

If one in Execution for me in a Cap. Stat. be Rescued from the Sheriff, I may have this Action against the Rescuers, or Debt against the Sheriff, and if they be Sued by the Sheriff after; may plead a Recovery, Croo. 1. 77.

If the Sheriff suffer one in Execution upon a St. Merch. to escape, the Conusee may have this, or an Action of Debt against him, at his choice, F. N. B. 93. B. C. Regist. 98. B. Co. 4. 94. So if I do duly distrain a man for Rent, and another Rescue the Distress from me: But if the Arrest of the Person, or the Distress of the Goods be not Legal, but Tortious; there perhaps this Action will not lie, Bulstr. 3. 121.

If any one shall Rescue a Prisoner in Execution, or Arrested for my Debt; I may have this Action against him, or against the Sheriff at my choice for this; or I may have an Action of Debt for it against the Sheriff, and if I Sue the Sheriff, then he may Sue him that made the Rescue; Croo. Rep. 1. 77.

If a man be Arrested at my Suit, and another man Rescue him, and so he get away in this Case I

may have this Action and recover the Debt and Damage against the Detainers, Hill. 20 Jac. B. R. and 7 Jac. B. R. Hawks Case. Or I may sue him that suffered the Escape or Rescue, at my choice, and he may have this remedy against him, or them that made the Rescue: And this is the proper Action to be had in all these and such like Cases, Croo. 1. 33. Popham Rep. 189. See for this in chap. 10. sect. 1, 2. &c. see more Croo. 1. last publisht 335. 349. 384, 385.

Escape
and false
Return.

If I have a Capias utlagatum, and deliver it to the Sheriff, to be Executed whilst the Defendant is in his company, and in his County, and he doth not Arrest but suffer him to escape and return a Non est inventus; this Action lieth, Brownl. and Goldsb. 12.

Where I had the Wardship of Land of an Heir from the King, and a stranger taketh up the Profits thereof from me; this Action might have been had, 11 H. 4. 64. Action, &c. 29.

Millard,
for taking
Toll not
due.

If a Millard take Toll of me, or of my Tenants, where we ought to have Toll free; an Action of Trespass Vi & armis lieth: But if he refuse to give Toll free, this Action lieth, 41 Ed. 3. 24. Action 31.

This Action lieth for the taking of Toll of me, or of my Tenants in a Fair, or Market, where they or I ought to be Toll free, 43 Ed. 3. 29. Action, &c. 3. Fitz. fol. 94. F. N. B. 941. 48 Ed. 3. 17. Leonards Rep. pl. 415.

Disturb-
ing me in
the taking
of my Toll
in a Fair
or Market

If I have right to Toll in a Fair, or Market, and another come there and set up a Toll-booth, and disturb my Servant in his gathering of Toll; I may have this Action against him, Croo. 2. part 122, 123. 600. Owens Rep. 107. Old B. of Entries fol. 5. New B. of Entries 10. See chap. 15. sect. 6. case 23.

If one take Toll of me, where none is due; I may have this Action, F. N. B. 94. 11 H. 4. 64. or an Action of Trespas, at my choice, Co. 4. 94.

If a Millard be to grind at his Mill my Grist Toll free, and he refuse to do so; I may have this Action against him, 43 Ed. 4. 24. Cro. 130. Plea. 100. per Keble.

If one that ought to pay Toll, sell, and pay no Toll; this Action lieth not, 7 H. 4. 45. Action; &c. 26. 20 H. 7. 1. And yet happily

If one shall Buy, or Sell in my Market, or Fair, that ought to pay Toll, and refuse to do so; I may have this Action, 7 H. 4. 44. pl. 11.

But if one pass over my Passage, or Port, where I have Toll, Quere what remedy, 21 H. 7. 16. pl. 25.

If being Lord of a Mannor, all my Tenants have been used, time out of mind, to Grind all their Corn at my Mill, and they do not so; I that am the Lord may have this Action against him that refuseth, Hobb. 253. And I must shew I am seized of such a Mannor, and prescribe to the thing, that all the Corn they spent in their Houses, or exposed to Sale in the place, was, time out of mind, used there to be Ground, &c. Brownl. and Goldsb. 18. See chap. 15. sect. 6. case 31, 32.

If one hinder the Parson to receive his just dues of Tithes, or other Dues; he may have this Action against him, Co. 2. part. Instit. 650.

If I set out my Tithes duly and the Parson will not take them away in convenient time; Or one that hath Bought my Hay on my Ground, shall suffer it to lie so long upon my Ground, or in my House, that I be damaged by it; I may have this Action against him, Godb. Rep. pl. 424. Bro. Action upon the Case 48. see chap. 15. sect. 6. case 14.

Hinder the Parson of Tithes, Not taking away Tithes.

Parson not
keeping a
Bull.

If the Parson of the Parish be bound by the common custome to keep a common Bull, or Boar, and do it not, and any Parishioner hath loss thereby; he may have this Action, for this Custome is reasonable, Croo. 1. last publisht 569.

Not say-
ing of Di-
vine Ser-
vice.

If one be bound by prescription to say Divine Service in my private Chappell, and do it not; I may have this Action, Croo. 5. 73. 22 H. 6. 46.

But if it be done to a Parish, it is otherwise; no Action will lie for any one particular man, Yet see chap. 5. sect. 9. and Croo. 2. 263. Coe. 5. 103. 9. 113.

Upon a
Bailment
to keep.
Sect. 7.

If I leave my Goods with one to keep for me, or I leave them with him, without any words passed between us, and he takes them into his custody, and the Goods be afterwards lost or wasted; I may recover the worth of them, by this Action, albeit he be to have nothing for the keeping of them: But if when he receiveth them, he doth take them with this special Caution and Agreement, that he tell the Owner that he will not answer for them, or will keep them as he keeps his own, or as well as he can; in these Cases no Action will lie for it, unless there be a good Consideration, and an Assumpsit to keep them safe in the Case, Coe. 4. 83. and 5. 13. Super Lit. 89. Kelw. 77. 12 Ed. 4. 15. 2 H. 7. 11. Old B. of Entries 39.

So if I Buy Corn of one, and pay part of the Money for it, and leave it with him to keep for me till such a time, and he converts it to his own use; I may have this Action: Or if it be in Baggs, I may have a Detinue, Kelw. 77. See more for this chap. 8. and chap. 9. throughout.

If I deliver Goods to W. and he deliver them over
to

to I. S. to my use, and I. S. to impair them; I may have this remedy against I. S. 12 Ed. 4. 13. Broo. 96.

So if I deliver my Goods to another, and he spoils, or loses them, See more chap. 9.

If one Borrow my Horse, which dieth suddenly, without any default in him; no Action will lie for this, 4 Ed. 3. 36. See more of this chap. 8, 9. About goods and Cattle.

But this Action will lie against him that shall keep from me Sheep delivered to me for a Year, to dung my Land, N. B. 26. B. Sheep.

If one have my Cattle to keep, and he suffers them to die, or be lost by his negligence; I may have this Action against him: But if they die by Gods Hand, without any negligence of his; no Action will lie for this, Croo. 5. 14. Dyer 12. 2 H. 7. 11. albeit he promise to keep them safe; by Just. Bridgman.

But if my Shepherd suffer my Sheep to be drowned, or my Plowman suffer my Corn to be spoiled; I may have this Action against him, 2 H. 7. 11. 7 H. 4. 14. Croo. 5. 13. Dyer 121. See more in chap. 6. chap. 7.

If one for Hire Borrow my Horse to Ride to London, and he Rides him further, or Rides him out of the way, or forwards and backwards, and forwards again in and upon the right way; in all these Cases I may have this Action, and especially if the Horse be hurt thereby: So if the Borrower Ride him an excessive pace, so as to hurt him, albeit he hath Ridden him no further then was agreed, Doct. and Stud. 128, 129. Upon a Loan.

So if one Hire my Goods to one purpose, and use them to another; in all these Cases I may have this Action: But if he that doth so Borrow my Horse, by hard Riding make him weary only, Upon a hire of goods.

so that he will do no work in a good while after ; no Action will lie for this, 12 Ed. 4. 813. 12 Ed. 4. 79. Co. 8. 146. 2 H. 7. 11.

If the borrower of my Horse shall put him into an old rotten House ready to fall, and the House fall down and kill him ; or if he neglect to take care of him, or suffer him to be abused, I may have this Action ; But if he put him in a strong House, which doth casually fall and kill him ; or if he die suddenly, without any default in the Borrower, in the doing of that for which he was Borrowed ; no Action will lie for this, Doct. and Stud. 128, 129. 40 Ed. 3. 6. See Exod. 22. 14, 15. Croo. 1. 14. Brownl. 1. part 8. 9. 17. See more chap. 15. sect. 6. case 6.

If one lend me a Horse for hire for a time, and take him from me within the time ; I may have this Action against him, Fitz. N. B. 80.

Goods
lost.

If one find my Goods, and they be after hurt or lost by casualty without any default of his, he is not to be charged : But if he lose them, or suffer them to be impaired by his neglect ; I may have this Action against him : But if they be left in a House, which by chance is Burned, or Falleth, or they be delivered to another to keep, who runs away with them ; here it seems the Finder is not to be charged, Doct. and Stud. 38. 129.

Detained.

The Executor one and thirty dayes after the death of the Testator, comes to the Heir, and demands his Goods in the House of the Heir, and he refuseth to deliver them ; it seems this is Actionable in this Case, and that this is a convenient time, Mich. 7. Jac. B. R. Steedmans Case. And so in all Cases where the Executor shall come in convenient time to demand his Goods, and is actually disturbed,
that

that he cannot have them; he may have this Action, Mich. 7 Jac. B. R.

It would have lien for the taking away of ones ^{Taken a-} ~~Willard~~, and he might have recovered the value of ^{way.} the Marriage, 29 Aff. 35.

If one take away my Goods from me, and another take them by force from him; it seems I may have this Action against the second taker, 12 Ed. 4. 12.

If one have a general, and another a special pro- ^{Two pro-} ~~perty~~ in one and the same thing, and they disturb ^{erties.} each other to have and use the thing according to Law; they may have this Action the one against the other. As if I Borrow or Hire a Horse, or other thing for a special purpose, I have a Property in it, and therefore if he take it away before I have used it to that purpose; I may have this Action against him. And if I abuse it, or use it to another purpose; as if I Borrow or Hire it to Ride to Dover, and go further, or go out of the way, or Ride forwards or backwards, or the like, or Ride him excessively; he may have this Action, and then especially when the Horse is hurt thereby: And in this Case, if I Ride out of the way, the Owner cannot take him from me, till I have gone my Journey, 12 Ed. 4. 8, 13. 21 Ed. 4. 79. Doct. and Stud. 128, 129. Co. 8. 146. 2 H. 7. 11. F. N. B. 186.

So if one deliver Goods to me, to deliver over, he hath the general property thereof, so as they may be taken in Execution for his Debt, and if they be taken away, he may have this Action of Trover for them: And if I have the special property upon which I may bring this Action also, if they be taken from me.

If one Borrow a Horse of me, and he use him in any other manner, then for which he was Lent; I may have this Action against him: And if he put him in an old rotten House, and it fall upon him, and he dies, or is hurt; this Action lieth: But if he be used well, and not abused, and die; or be put in a strong House, and it fall upon him, and kill him; no Action will lie for this, 40 Ed. 3. 6. Doct. and Stud. 29. 128.

If I Borrow a Horse for one purpose, and use him to another, the Lender may have this Action against me: And if he take him from me, or disturb me in the use of him, to that end that I Borrowed him; I may have this Action against him: And so in other Cases, where I have but a special property in Goods: And therein also in some Cases, he that hath the General property of the same Goods, may have an Action. As if I should hire another mans Horse for my life, he hath the General, and I the Special property, and we may not wrong each other of his Interest in the thing, and he that hath wrong herein may be Relieved by this Action, 17 Ed. 4. 8. Coe. upon Lit. 145. 10 Ed. 4. 14. Kelw. 88. Coe. 11. 50. 7. 17. Dyer 306.

If one Borrow my Horse to do such a thing, and put him to a worse work, whereby he is hurt; I may have this Action, but must shew wherein it was, and it is not sufficient to say he put a greater burden on him generally, Croo. 1. part last publisht 194.

Detinue. If I deliver to another my Cattle, or Goods to keep, and he keep them negligently, so as they are lost or spoiled; I may have this Action, or Detinue, for my relief, Brownl. 2. part 152. 2 H. 7. 11. Dyer 12. Coe. 7. 15.

But

But if the Spoil comes by Gods hand, without any neglect of his; no Action will lie for this. By Just. Bridgman.

If one have my Cattle to keep, and they die by Gods hand; this Action will not lie, though he promise to keep them safe: But if a man have my Cattle to keep, and suffer them to die by his negligence; I may have this Action, 2 H. 7, 11. Dyer. Sect. 1. 12. Co. 5, 14. per Just. Bridgman.

If I pledge my Goods to another for Money, and tender the Money at the time, and he refuseth to deliver them, and after they perish by his default; I may have this Action: But if they perish by accident, and without any default of his, it is otherwise, Doct. and Stud. 129. Old B. of Entries, 8. F. N. B. 86. See for this chap. 4.

If one that findeth my Goods doth lose them, or suffer them to be impaired by his default; I may have this Action against him: But if they be left in a House, which happens to be burnt, or to fall and spoil them; or they be delivered to another to keep, who doth run away with them; in these cases it seems the finder shall not be chargeable.

And if one find my Goods, and they be afterwards hurt, or lost, without any default of his, by casualty; no Action will lie for this, Doct. and Stud. 138, 139. Co. 4, 83.

This Action will lie for taking a distress of a Parson, or Vicar in his spiritual possession against Articuli Cleri. 94. N. B. 94 Co. 12, 100.

So for distraining my Cattle in the Highway, Regist. 100. B. Co. 12, 100.

So for distraining a Prelates Horse, where are other things distrainable; he may have this Action, or an Action of Trespass, Co. 4, 95. Regist. Orig. 100. B.

So

For spoiling my Cattle or Goods. Sect. 1.

Pledge.

Taking a distress.

So for distraining Cattle of the Plow, and Lambs, where there is other distress sufficient, Lib. Intr. 226. N. B. 90. B. Dyer. 312. And this is actionable, albeit the Tenant hath made an agreement, for his Rent, 18 Ed. 2. See Croo. 2, 133.

So for distraining of Suitors to come to a Lét that do not owe Suit thereto, Croo. 4, 49. B. Regist. Orig. 103. F. N. B. 94. G.

So if I have a Mannor within an Honor, and a Lét in my Mannor, for my Tenants, and I, or my Tenants are distrained by the Lord of the Honor, to come to his Lét; he that is so-distrained, may have this, or an Action of Trespals, F. N. B. 94. Regist. 103. B. Croo. 4, 94.

So for distraining Cows great with Calf, and driving, or so using them, that thereby they lose their Calves, F. N. B. 86.

For preventing my distress.

So for distraining Tenants in ancient Demesne for Toll, that ought to be Toll-free, Croo. 1. last published. 227.

If a strangers Cattle be on my ground damage-feasant, and a third man drives them off to prevent my taking of them; I may have this Action.

So if I be coming to distrain my Tenant for my Rent, who hearing thereof, drives away his Cattle to prevent my distress, Finches Law, 300. Croo. 5, 91. & H. 20 Jac. By Just. Houghton.

So if one drive my Cattle into another mans ground, so as they be Trespassors, and distrained damage-feasant, and I forced to compound for it, Croo. 1. 236.

For damage-feasant.

If one take going for Cattle with till Michaelmas, and do not then take them away, but suffer them to remain on my ground damage-feasant; I may have this Action, 21 H. 7. 45 Ed. 3, 6.

So if one by my Way in my Meadow, and do not take it away in time, but suffer it so long upon my ground, as to mar my grals; I may have this Action for it, Fitz, 48.

So if I let out the Parsons Tithes duly, and give him notice thereof, and he do not take it away out of my House, or Ground, in a reasonable time, but suffer it there to hurt my ground; I may have this Action against him, Struckleys Case. Co. B. 45 Ed. 3, 6. Mich. 21 Jac. Denhams Case, adjudged, Leys Rep. 70, 71.

If one find my Goods, and use them, or wilfully abuse them; as if Paper, and he put it into the water, or the like; I may have this Action against him. But not for any negligent keeping of them, as if it be a Garment that I find of anothers, and I suffer it to be moth-eaten; or a Horse, and give him no meat; for no Law compelleth him that finds anything to keep it safely, Croo. 1. last publisht. 219.

If I leave my Horse with an Inn-keeper to be safely kept for me at such a Rate, and the Hostler lends him out to hire to divers persons, and lames him, whereby he is made unfit for my service, and work I have to do for him; I may have this Action against him for this, Bendl. 171.

Goods pawned without setting any time of Redemption, are not gone by the death of him to whom they are pawned; but otherwise by the death of him that pawned them.

If one that hath so pawned his Goods, after his death to whom they are pawned, tender the Money to his Executors, and he refuseth it; although this be not a payment in fait, yet the request doth vest the property in him that pawned it, Noyes Rep. 137.

And

And he may have remedy by this Action that is wronged therein.

About
Deeds.
Sect. 9.

This Action will lie for me against him that shall burn, tear, lose, or spoil my Deed, or the seal of my Deed, when it is either delivered to him to be kept, or when he shall come by it otherwise; and this albeit the Deed be nought, 9 Ed. 4, 53. 34 H. 64. 39 H. 6, 46. Old. Lib. Intr. 7. B. sect. 1. sect. 2. Co. upon Lit. 286. 4 H. 7, 7. Co. 1, 1. 12 Ed. 4, 13. Broo. Action, &c. 96, 382. M. 9 Jac. B. R. Constables Case. Bulstr. 1. part. 214. Croo. 2, 255.

If I have bought Lands, and a stranger hath some of my Deeds that do belong to it, and refuseth to deliver them, but keeps them from me; I may have this Action, Old B. of Entries. fol. 5.

So if one sell me his Deeds with his Land, and refuses to deliver them to me upon request, Lib. Intr. 5. A. sect. 2.

Forgery
or Rasure.

So for the forgery of a Deed, by which I am hurt, N. B. 96. B. 17 Ed. 3, 49. Regist. Orig. 115. A. and B. As if one forge an Obligation, which is put in Suit against me; I may have this Action against him, 5 Ed. 4, 126. Co. 4, 18. 19 H. 6, 44. 43 Ed. 3, 10.

This Action will lie against a Curate for rasing out of a mans name, and inserting and reading of another name in a sentence of Excommunication in the Church, by which he is troubled, &c. Croo. 1. part last publisht, 838.

If one seal a Deed, with some blanks to be filled up afterwards, and another shall fraudulently insert something without his consent that sealed it, &c. this Action will lie, Croo. 1. part last publisht. 626, 627.

Also this Action will lie against him that shall forge

forge a St. Merchant, or staple Recognizance, Debt, Obligation, or other such like writing in anothers name, and the same be made use of against him, and thereby he is hurt, whose name is forged, N. B. 96. B. 17 Ed. 3, 49. Regist. Orig. 115. A. and B. 39 Ed. 3, 13. Regist. Orig. 102. B. *¶* I forge any thing in a Record, Stiles. Rep. 117. 5 Ed. 4, 126. pl. 144. Co. 4, 18. *¶* I a Resignation, Regist. Orig. 14. B. *¶* I a Will, 5 Ed. 4, 126. B. *¶* I any such like publick Instrument by which I am hurt; I may have this Action against him; but not till I am molested by it, 43 Ed. 3, 10. 7 Ed. 4, 116, 126. F. N. B. 99. K. See Deceit. 19 H. 6, 44.

Forgery of any Record, or Deed.

If I seize an Estray within my Pannor, as he longing to it, and one take it from me; I may have this Action, H. 31 Ed. 3. Breife. 333. M. 13 Ed. 3. Writ. 674.

About an Estray.

If an Officer arrest me, and I offer him sufficient Bail, and he refuse it, and keep me Prisoner afterwards; it seems I may have this Action against him, and against the Plaintiff, if he have any hand in it, Cro. 1. part 142. Also I may have this Action against an Officer, in these following Cases. That is to say,

Officer.

1. Where an Officer takes Toll of me where none is due, F. N. B. 94.

Miscarriage in his Office.

2. Where an Officer of a Court shall get a privilege for one, supposing him to be his Servant, and is not, by which I am prejudiced in my Suit against him, 31 Ed. 4, 22. So where he shall make any false Return or Certificate.

3. Where a publick Officer shall refuse to execute his Office for his own sake being tendered to him, or recoverable by Law; As if a Serjeant at Law refuse to give advice, or an Attorney to be retained by

False Return or Certificate.

by

Serjeant.
Attorney.
Sheriff.

by me; some hold, that for this I may have this Action, for they may sue for their Fees; But otherwise it is of a Barrister, for he may not sue for his Fee. By Justice Bridgman, 17 Car. *1.

So where a Sheriff, Bailiff, or any such like Officer, do mis-bemean themselves, by doing otherwise, and against, or by not doing, or mis-doing in their Office; the party grieved thereby may have this Action, and especially if he tender him his due Fee before-hand, See chap. 15. sect. 6. case 11.

Refuseth
to arrest.

And so if the Sheriff refuse my Writ, as a Writ of Execution against one he hath in Execution, or the like; or if he have a Writ, or legal Warrant to arrest a man at my suit, and may do it, or I shew him the man, and this be on the Lords-day, and he doth it not, Pasche. 18 Jac. B. R. per three Justices, Co. 5, 89. & 9, 60. Plow. 48, 41. Ass. pl. 12. Pasche. 7 Jac. By three Justices.

Refuseth
to return
a Writ.

So where the Sheriff refuseth to return my Writ, or makes a false return upon it, 41. Ass. pl. 12. 21 Ed. 3, 43. 10 H. 7, 23. Old B. of Entries. 11.

Makes a
false Re-
turn of a
Writ.

So where the Officer shall make a false Certificate in a course of Law, where he is bound by Law to make a true one, Co. 11, 94.

Out-laws,
and not
proclaims.
Return a
Juror ex-
empted.

So where the Sheriff shall out-law a man, and not proclaim him according to the Statute, 10 H. 7, 23. Bro. 122.

So where he shall return a man of a Jury, that hath a Charter of Exemption, and given notice thereof to the Sheriff, 18 H. 8, 5. See chap. 10.

Entering a
Franchise

So if he shall enter upon any private mans Franchise, to execute his Writs, he that hath the Franchise, may have this Writ; but if it be to arrest a man, the arrest is good, and no false Imprisonment will lie in the Case, F. N. B. 95.

So

Chap. 12.

for Male-feasance.

385

So if he shall suffer a man arrested upon an Execution to escape, the first Plaintiff may have this Action, Co. 4, 95. 15 Ed. 4, 32.

Escape upon Arrest.

So if he shall proceed in a Cause in his Court, after the same is removed, F. N. B. 99.

Proceed when a cause is removed.

So if he or his Bailiff attach a mans Goods, and then deliver them back again to him, F. N. B. 92.

But it is said, that all this is to be understood of Ministerial Acts onely, and that for Judicial Acts, some other remedy is to be had against them for their miscarriage therein, 12 H. 6, 3. 2 R. 39.

But for Ministerial Acts it is a rule, that if any Ministerial Officer of any Court, shall make a false Return, or otherwise mis-demean himself, by which I have damage; I may have this Action: But if I have no damage by it; I can have no Action for it, Bulstr. 2. part. 338, 265.

Also this Action will lie in many Cases about Officers, both for, and against them; as this Action will lie against him that shall hinder me in the seizure, or taking the use or profits of my Office, if an Office that brings profit, Cro. 2, 60, 6. Goldsb. 2. part. 332. Co. 5, 76. Bridgman, 118. 6 Ed. 4. 9. 9 R. 2. Action of the Case. 2. Bro. 94. Co. 9, 50. F. N. B. 94. As if I be Steward of an antient Court, and another disturb me in the keeping of the Court, Cro. 1. part. 11, 425. And so the like, Cro. 1, 203. Cro. 1. last publisht. 859. Cro. 2, 606. March. Rep. 939.

For hindrance of an Officer in the doing of his Office. Sect. 10. Disturbance in a Court keeping. Disturbance of an Officer in the execution of his Office.

If an Officer be coming to arrest a mans person; or attach his Goods at my Suit, and another man conveys away the Goods, or the person, so that the Officer cannot do his work for me; I may have this Action against the disturber, and so also perhaps may the Officer, F. N. B. 102. 21 H. 7, 40. 18 Ed.

3. 3.

And

And so generally, for any disturber of a Sheriff, or any such like Officer in the Execution of his Office; this Action will lie, See chap. 15. sect. 19, 22.

Council-
lor or At-
torney.

So if my Councello, or Attorney do my business falsly, and unfaithfully; I may have this Action against him, 14 H. 6, 18. 20 H. 6, 25. See chap. 10.

So it may lie against a Constable, or Churchwarden of a Parish for a false presentment; as to present, a man hath Lands in a Parish, to bring him under the rates there, where he hath none, or the like, Croo. 1. 336.

For dou-
ble prose-
cution of
a Fieri fa-
cias.

And if one sue out a Fieri facias upon a Judgment after he hath had a Fieri facias returned, that the Goods were levied, &c. this Action will lie; the party grieved may have his remedy by this Action.

About
Cattle.

If one put Piles in a River, by which my Oxen perish; I may have this Action against him for this F. N. B. 92. F.

Destroy
my Cattle

So if one put such things into the water, as occasion the drowning of my Cattle: And if my Cattle be passing over Severne in a boat, and one of the passengers purposely, or otherwise force one of them into the water, whereby the rest of themselves follow, and are drowned; I may have this Action against him, and recover damages for them all, or at least for that one that he forced into the water.

If a stranger drive my Cattle upon the ground of I. S. to the end that he may distrain them damage-feasant; I may have this Action, or some other for this, Lane's Rep. 67. 9 Ed. 4, 4. So if one take my other Goods, and put them on another mans ground, &c.

If I have right to Corn growing, Grasse, Fruit
of

of Trees, Hemp, Flax, or the like things, as Emblements, not having any Possession thereof, nor of the Soil, or Ground whereon it Groweth, and the Law gives me a reasonable time to take it away; and if within this time another disturbs and hinder me in the taking of it; I may have this Action for my Relief, Coo. upon Lit. 56. Kelw. 125. 160.

If I be to have Corn that I have Sowed upon another mans Land, and be disturbed in the taking of it; I may have this Action, Finches Ley. 187.

If the Lord Cut down the Copping-holders Trees without his Leave, or a special Custome of the Manor, to enable him to it; the Copping-holders may have this Action against the Lord for it, Mich. 3 Jac. B. R. Cross and Abbot, and Trin. 17 Jac. By Justice Hughton. And this notwithstanding he leave the Loppings of them.

Also if the Lord Cut down any Tree of his Tenants, that is to have the Lops, and take it away; this Action lieth, Brownl. 1. part 197. 231.

If I provide Wood for a special purpose, as for Iron, or the like, and one take it away; I may have this Action for my remedy, New B. of Entries. 36, 37.

If A. Sell me Six Hundred Loads of Wood, to be taken by his Assignment; and after he Sells Four Hundred Loads to M. to be taken where he will, after he Assigns the Six Hundred Loads to me, and I Cut it down, and M. takes it away under colour of the Contract; I may have this Action against M. Coo. 5. 24.

If the Lord Cut down all the Copping-holders Trees, and doth not leave him Fire-wood, &c. The Servant may have this Action against him,

Brownl. 1. part. 231. See Brownl. 1. part 141. 197. 208. 2. part. 57. 331.

Pales.

If one take away my Pales; it seems, I may have this Action of Trespas, at my choice, 15 Ed. 4. 4 By Choke.

Pigeons.

Also this Action will lie for me against him that shall take my Pigeons with Engines, 16 Ed. 4. 7.

Action upon Action.

If I send my Servant upon a Message of importance, and another having Digged a Hole in the High-way, into which the Servant falls, and hurts himself, so that he cannot go any further upon his Business; in this Case both the Servant and Master may have each of them this Action for this.

Smith.

So likewise in the Case of the Smith, where he picks the Horse of the Servant, being on his Journey, to pay Money for his Master, to save the penalty of a Bond, Bulstr. 2. part 134.

Threatning my Servant.

If one Challenge my Servant as his, so that he dares not go abroad; it seems, I may have an Action for this, Bulstr. 2. 134.

For casting goods out of a Boat, works of necessity.

If a Boat be in danger by a Storm, and the Boat-man or a Passenger, to save their Lives, cast out some of the Goods; no Action will lie for this, no more than for the pulling down of a House to stop a fire, Bulstr. 2. part 280.

For landing goods, Custome unpaid.

If my Servant, or a Stranger, shall without Authority from me, Land my Goods out of a Ship, before the Kings Custome be paid, by which I Forfeit them; I may have this Action against him for it, Croo. 2. 266. Lanes Rep, 266. F. N. B. 93, 94. 43 Ed. 3. 3.

If I have Common in a waste, and one Dig a Pit there, which my Beast falleth into, and is hurt, I may have this Action: But must be sure to set forth

forth I have Common there, for if my Horses be straying there, and take this hurt by that means; no Action will lie for this, Croo. 2. 158.

If one put such things into the water, where a Boat goeth, as occasions the turning of the Boat, and drowning of my Sheep therein; I may have this Action against him, F. N. B. 92. For overturning a Boat.

If one hath a Dog, that doth use to Bite Men, About a or Cattle, and he knows thereof, and yet suffers him to continue, and he Bite me, my Child, Servant, or Cattle, whereby I suffer any Damage, or lose the Service of my Servant, or the like; I may have this Action against the Owner of the Dog, Dyer 25. pl. 162. 29. pl. 195. 28 H. 6. 7. pl. 7. Lib. Intr. 616. B. sect. 1. Regist. Orig. 110. B. M. A. But here note,

1. That the Dog must be used to Bite. 2. That the Master know thereof, yet Sciens is not Traversable, but must be given in Evidence, Croo. 4. 188. And therefore when the Declaration was *Quendam Canem ad mordendum Oves Traversæ. consuetum apud H. scienter tenuit & custodivit, qui quidem Canis, such a time and place killed the Plaintiffs Sheep, for he might knowingly keep the Dog, and not know he was used to bite, &c.* It was therefore Judged not to be a good Declaration, Croo. 1. 350.

The Plaintiff in his Declaration must shew, that it was his Dog at the time of the Biting, otherwise it shall not be intended, Palche. 9 Jac. B. R. Louder and Sounds, 21 Ed. 4. 22. Dyer 340. Counr.

If A. have such a Dog, and B. take him out, without the privity of A. and then he kill my Cattle; in this Case A. must answer them so me,

By Baron Denham at Gloucester. Assizes.

If the Owner of the Dog, after the hurt done, shall bring him to the Master, Father, or Owner of the Cattle, that suffer by him, and bid him do justice upon him; this will excuse him, 7 Ed. 3. Barr. 290. so Exod. 21. 29. 35. Croo. 1. part 184. See chap. 15. sect. 6. case 5, 6.

By a Nuisance of dead Cattle.

If one have a Beast that died of the Murrain, and he throw out the Inwards, or Offal of it in my Ground, whereby my Beasts are Infected by it, and die; I may have this Action against him, Stiles Rep. 50.

For putting poison into my Meat.

If one put Poison into my Meat, and I be hurt by it; I may have this Action against him, Regist. Orig. 102.

By a Physician or Chirurgeon.

If a man that is no Physician or Chirurgeon professed, shall for nothing, but out of good will, advise a man to use a Medicine that doth not so well agree with him, or shall negligently apply a Medicine without taking Money; this is nothing, nor will any Action lie for this: But if he take Money for such Cures. Quere. So if I give one Counsel to give a Medicine to a Horse, and do it for nothing, and the Horse die of it; no Action will lie against me for this; yet if there be Malice in it, and it be done of purpose, it may be more questionable, 19 H. 5. 49. Action, &c. 10. 48 Ed. 3. 6. Writ. 627. But on the other side, if a Physician or Chirurgeon undertake a Cure, and neglect it, or apply contrary Medicines by himself, or Servants; this Action will lie, 19 H. 6. 49. 48 Ed. 3. 6. 11 H. 6. 18. 21 H. 6. 55. 11 Ed. 4. 6. 19 H. 6. 49. 14 H. 6. 18. 21 H. 6. 55. Regist. Orig. 105. B. 112. A. And this where no warranty of Cure is, for there, if he do his best, he is

is excusable: But if he warrant, or promise Cure for a good Consideration, he must do it, or will be liable to Action, 17 Ed. 4. 25. Doct. and Stud. 105. Plow. 305. Bulstr. 2. 332.

If one take upon him to Cure another of a wound, and cannot do it; this Action lieth, Bulstr. 2. 333.

If a Barber have me with an unwholsome Razor, so that my Face is hurt thereby, or if he Cut my Face with any Razor; I may have this Action against him, F. N. B. 94. 7 H. 6. 5. Old B. of Entries. 2. Barber.

This Action was brought against a man for plundering him of his Packs, Stiles Rep. 358. For plundering.

If my Bayliff, or other Servant, contrary to my Trust, shall either wilfully, or negligently hurt me in my Business, wherein he is Trusted for me, I may have this Action against him, for his Wages is certain; and he hath this Action to recover it, 2 H. 7. 11. 3 H. 6. 36. And therefore, By a Servant for breach of Trust.

If my Bayliff that doth keep my Cattle kill them, or otherwise abuse them, lose, or sell them; or Cut down my Trees, hoving charge of my Land, or the like. Or my Butler break my Hamper, or the like, 2 H. 7. 1. See chap. 9. chap. 7. Or my Plow-man drive my Cattle so hard as to kill, or hurt them, Co. 5. 14. Or my Shepherd suffer my Sheep to be drowned, or turn Scabby by his neglect; I may have this Action against them, 2 H. 7. 1. Co. 5. 13. 12 Ed. 4. 26. 27. Broo. 99. See chap. 6. chap. 7. That for a voluntary Trespass, in these Cases, Trespass, and a Trespass on the Case is to be had, Cro. 1. last published 777. 784. If my Bayliff, or Servant be to pay Money for me to one, and doth it not, by which I suffer loss, I may have this Action, 20 H. 6. 9. Plow-man Shepherd.

By a work
man or
servant,
for not
doing, or
mis-doing
his work.

If my Work-man be retained to do my work, and doth it amiss; I may have this Action against him, 3 H. 6. 36. 14 H. 6. 18.

Or if my Servant refuse, or omit to do the work of his place, and I have damage by it; I may have this Action against him, Regist. Orig. 101.

If one promise me that is my Bayliff, to keep my Cattle safe, and doth not so; I may have this Action, Lib. Intr. 9. A. sect. 1. and fol. 3. sect. 1.

Upon a
Promise.

But if he promise to keep my Goods, and after refuseth to undertake them; no Action will lie for this, Doct. and Stud. 102. B.

If one promise to make a Coach, repair a House, or to do any such like thing, or to do any kind of work, and doth it not well, but Deceitfully, or Simply doth Bar my work; I may have this Action: But in all such kind of Cases, there must be some good Consideration for it, otherwise it will be but Nudum pactum, ex quo non oritur Actio. N. B. 94. A. 3 H. 6. pl. 33. Regist. Orig. 110. B.

If a Carpenter undertake to Build me a House in one form, and Buildeth it in another; I may have this Action, N. B. 145. G. 2 H. 4. 9. 24 H. 7. 41. 20 H. 6. 35.

If one undertake to set Plants for me, or any such like work, and doth it Deceitfully; I may have this Action, Old Book of Entries. fol. 13.

For not
doing
work.

If one promise to Scour my Ditch, or the like work, and doth it not, by which my Ground is drowned, or I have any special damage; I may have this Action against him: But there must be some Consideration to bind a Labourer: Or it must be the Servants work in his place, or else it will not be Actionable, 3 H. 6. 36. F. N. B. 94. A. 3 H. 6. pl. 33. Regist. Orig. 109. B. See more chap.

chep. 7. sect. 1. 2. &c. Co. 11. 94.

If I be a Prisoner, and the Goalor abuse me, By a Goalor to his Prisoner.
by putting on Irons on me; or putting of me in the Stocks, or the like; or not giving me Sustenance, or the like, for my Money, being a Prisoner for Debt, &c. or as my Case is; I may have this Action, N. B. 93 H.

If a Woplor spoil my Garment in the making; Taylor.
I may have this Action, and this without any Consideration given, or promise to do it well, F. N. B. 94. 7 H. 6. 5.

And if men of other Trades upon agreement with Consideration, undertake the work of their Trade, and do it not well; this Action lieth against them, 46 Ed. 3. 19. Old Book of Entries. fol. 2. 14 H. 7. 22. Bullst. 2. part 196, 197. 46 Ed. 3. 19.

If a Farrier take upon him to Cure my Horse, Farrier or Smith.
and apply unwholsome Medicines, &c. this Action lies: So if he warrant him, and doth not Cure him, Broo. Action, &c. 24.

If a Smith undertake to shoe my Horse, and prick him; so if any other Artificer shall not do his work well; I may have this Action, 46 Ed. 3. 2. N. B. 94. D. 18 Ed. 3. 6.

If a Smith take my Horse to shoe, and doth it not, Sect. 12.
14 H. 6. 18. Or undertake to Cure him, and doth it not: And it is not sufficient to say, he did his best, 19 H. 6. 49. Regist. Orig. 119. B. But if he only take him to Cure, and do not promise to Cure him, it is otherwise, 43 Ed. 3. 33. 45 Ed. 3. 17. 48 Ed. 3. 6. 27. Ass. 56. see chap 7.

Also this Action will lie against a Smith that refuseth to shoe my Horse, where he hath necessaries to do it, and I tender him his pay for

Warranty
to cure a
Horse.

for it, 14 H. 6. 18. 18 H. 7. 10. pl. 4.

If a Farrier undertake the Cure of my Horse, and doth apply to him contrary and dangerous Medicines, and thereby hurt him; I may have this Action: But if no default be in him, it lieth not, and yet his warranty or promise to Cure will make him chargeable, if he do it not, 19 H. 6. 47. 49. 43 Ed. 3. 33. 48 Ed. 3. 6. Bolliv. 2. part 334. See chap. 7. sect. 1.

If a Smith Cly my Horse in the Shoving of him; I may have this Action: And if the Master send his Servant about an impoſſeant buſineſs, as to pay Money, or the like, and the Smith Cly his Horse, and lame him, so that he cannot come in time to pay him his Money, or have any special loss by it; the Master and Servant may each of them have this Action against him, Bulliv. 2. part 334.

If a Smith undertake to shoe my Horse, and perform a him, so that I lose the use of him for a time, without there be no agreement, warranty, or wages promised, or given, yet this mis-doing is actionable, and is all one whether the Horse were brought by my self, or Servant, 46 Ed. 3. 19. Action, &c. 35. Fitz. 94. 17 Ed. 4. 43. 11 Ed. 6. 4. 14 H. 6. 18. 3 H. 36. Regiſt. Orig. 106. A.

Against
the Lord
by a Cop-
py-holder

A Coppy-Holder by Custome may Name who shall succeed him, and pray he may be admitted, and offer a reasonable fine; but if the Lord refuse to admit him, he may not have this Action against the Lord, Pasche 13 Jac. B. R. Ford and Hokin. Croo. 2. 368. See the Case-chap. 15. sect. 6. Case 26.

For Refu-
sal to ad-
mit a Ten-
nant.

Also this Action will not lie against the Lord of a Mannor for refusal to admit the Plaintiff unto a Coppy-hold Estate, being nominated there-
unto

unto by the prefent Coppy-holder, according to the
Cufome of the Mannor, Bulfr. 2. part. 336.

Now againft a Lord, for his refufal to hold a
Court, nor admit in another cafe, without the help
of a fpecial Cufome to warrant the Action, Bulfr.
2. part. 337, 338.

But if a Lord of antient Demefne will not
hold his Court of Halice, and if a Demandant in a
Writ of Right there have damage by it; I may
have this Action, 11 Ed. 2. Action upon the Cafe,
46. 14 Ed. 3. Action of the Cafe. 39.

If one fell me his Land for Twenty pound paid
him, and then will not make me an affurance of it;
I may have this Action, 22 H. 7, 41. Action, &c.
51. 22 H. 6, 44.

For refu-
fing to
make my
Eftate.

If one fell Land to me, or promife me the pos-
felfion of Land, or promife to make me an Eftate
of Land for good confideration, and doth not, I may
have this Action, 3 H. 7, 14. 14 H. 8, 15. Regift.
112. A.

But this Action will not lie againft a Feoffee, or
Leffee in truft, that fhall not perform his truft of
Land.

Feoffee in
truft
break his
truft of
Land.

Now againft a Tenant for life or years that will
not Attorn.

Refufal to
attorn, to
make live-
ry of Sei-
m.

Now againft a man that hath made a Feoffment,
and will not give livery of Seifin upon it.

Now for not prefenting another to a Benefice; as
if one promife to prefent I. S. and he prefents ano-
ther; nor generally where he that would have the
thing, hath fome right and intereft in, and to the
thing: But in all cafes of Spiniferial Offices, if
they refufe to do their Offices, Actions upon the
Cafe will lie againft them, as againft the Clerk of
the Inrolment: As if a man hath a Deed to be in-
rolled

Refufal to
inroll a
Deed.

rolled

rolled within Six moneths, or else he loierh his Land, if the Clerk of the Parlements will not in-
roll it; this Action will lie against him, Bulstr. 2,
336.

Ordinary
refuse to
institute
or induct.

But if a Bishop refuse to induct a Parson; or a
Steward to make an Entry, where it ought to be
done; it is said, no Action will lie for any of these
things. And it is said, if an Arch-Deacon refuse
to induct me, (being a Clerk) or the Ordinary to
institute me; I may have this Action, 26 H. 8, 3.
N. B. 47. M. 12 Jac. B. R. Poole and Godfrey. 100.
12, 128. 47 H. 6. 8. 7 Ed. 4, 21. 8 Ed. 4. 14, 17.
And so this Action lieth against a Spiritual Offi-
cer, as in this; and other Cases. But in case where
the proceedings in the Spiritual Court be all Co-
ram non Judice, there it is otherwise, Bulstr. 2.
part. 266.

Presentati-
on, Nomi-
nation.

If A. hath the nomination, and B. the presen-
tation to a Spiritual Living, and A. doth nomi-
nate me, but B. refuseth to present me; I may not
have this Action against B. for this, Pasche. 13 Jac.
B. R. Ford and Hoskins Case.

To find a
Priest.

If one man be by prescription to find a Priest in
a place, and doth not; happily this Action may lie.
But if he be to be provided by the Lord and Tes-
nants of a Mannor, it is otherwise, 21 H. 7, 5.
22 H. 6, 46. 100. 4. Action, &c. 12.

Beedle of
a Hundred

If one instituted have a Mandat from the Bi-
shop, and he refuse to do according to his Mandat;
an Action will lie for this refusal, Bulstr. 2, 336.

The Beedle of a Hundred brought this Action
against many, and prescribes to have three Gallons
of the best Beer of every Brewer for seven pence,
and good; 1. Because he need not shew what estate.
2. It is good against many, 19 R. 2. Action, &c. 51.

This

This Action will lie against him which ought to Enclosure inclose, and doth not, by which my grass is eaten up, 11 R. 2. Action on the case, 36.

But if it be between two Houses, a Curia claudenda lier. Curia Claudenda.

If I, being a stranger, and not of the Corporation of Weavers in London, and receive of R. in London Forty pounds worth of Silk to be woven for one R. in London, and carry it to Hackney, and there weave it, and bring it back to London, and receive money for it; no Action will lie for the Corporation against me for this, Croo. 1. last published. 803. No more than if a Taylor buy Cloth with in London, or receive any other thing there, and make a Garment thereof in the Country; for this is no intermedling with their Trade, Croo. 1. last published.

Also this Action will not lie against one for taking Sect. 13. of a false Oath in a Suit, by which I am damnified, Owens Rep. 158.

If my Lessee, that is bound by Law to repair my House, pay Subsidies, or the like, neglect it, and I suffer thereby; I may have this Action against him, Dyer. 36. pl. 37. 21 H. 7, 12. 22 H. 6, 14. Reparations of a house.

If one be, time out of mind, to repair a Hedge between my Close and his, and he let it be unrepaired, that my Cattle go into his, or other mens grounds, or other mens Cattle go into my ground, by reason of which, I have damage; I may have this Action for it, Croo. 2, 669. 20 Jac. B. R. Of a hedge

If one ought to repair a Bridge, by which I have a way to my Mannor, and he do it not; I may have this Action, 11 H. 4, 82. 45 Ed. 3, 17. Action, &c. Of a bridge

So if one be to repair or scoure a Ditch, and do it Of a ditch

it not, by which my Land is drowned, or I have any special damage; I may have this Action, 11 H. 4, 82. Action, &c. 30, 34, 36. F. N. B. 93. G.

Of a Wall
or Bank.
Averment

So if he repair not a Wall, or Bank of a River, whereby my Land is surrounded; but in these cases, and such like, I must aver some special damage to me, by the not doing thereof, Action upon, &c. 36, 37. 50. 29 Ed. 3, 32. Trin. 20 Jac. B. R.

Of the
High-way.

If the high-way be to be repaired by any special person, and is not, and I have any special damage thereby; I may have this Action, 5 Ed. 4, 3. per Heidon. See Nuisance.

Mounds
or Banks
of Rivers.

Also this Action will lie for me against him which ought to repair a Mound, or Bank of the Sea, or of any great River, and doth it not, by which my Land is drowned, 29 Ed. 3, 32. 12 H. 4, 7. N. B. 93. G. 7 H. 4, 31. pl. 13.

Gutter.

So of the Bank of a River, N. B. 93. G. 15 Ed. 4, 18. 45 Ed. 3, 17. 7 H. 4, 8. 11 H. 4, 82. 33 H. 6, 36. But if the breach and inundation be by any extraordinary accident as by a Tempest, or the like; no Action lieth, 29 Ed. 3, 32. pl. 49. Coe. 10, 139.

House.

So for not repairing of a Gutter, Lib. Intr. 10. D. f. 1.

Banks or
Hedges.

So for not repairing of a House ready to fall on my House, Croo. 22 H. 7, 98. pl. 4.

Bridges,
&c. not
repaired,
whereby,
&c.

If one be tyed by prescription or custome, time out of mind, to repair the Banks of the Sea, Seaverne, or other River, or to make a hedge between his ground and mine, and doth it, but doth it not sufficiently, by which I have any special damage; I may have this Action, Bulstr. 2. part. 280.

If there be a charge upon any man, by reason of the Tenure of his House, or Land, to repair any Bank, Bridge, Gutter, or private way, or the like, and doth it not, and thereby I have any special damage I may have this Action, Old B. of Entries. 10.

This Action will lie against an Inn-keeper, that refusech to entertain me for my Money, having spare room to do it, 39 H. 6, 18. 18 H. 7, 50. pl. 4. 14 H. 7, 22. Dyer. 158.

So if a Victualler refuse to sell to me Victuals for my Money, 39 H. 6, 18. Sect. 14.

If a Carrier undertake to carry my Goods safe, or one undertake to carry my Wine, or Oyl, and break the Pipe or Vessel by negligence; I may have this Action, 2 H. 7, 11. Lib. Intr. 2. D. sect. 1. Regist. 110. A. See chap. 7. sect. 1. Carrier.

Or if such a Common Carrier (albeit he be but newly a Carrier, or carry but for some few persons only, if he carry for Money) take any thing from me to carry, and do hurt, or impair it himself, or suffer it to be hurt by another, by his apparent negligence, as if he over-load his Horse, and by that means fall into the water, or drive by night, or out of the way, and is thereby robbed; I may have this Action against him, M. 21 Jac. B. R.

And yet a Carrier may by special agreement in his undertaking of the Carriage, avoid this Action, Doct. and Stud. 139. Fitz. 14, 15.

Also if my Goods be lost by his negligence; I may have this Action; And therefore

If a Ferry-man undertake to carry me over the water, and doth it not; I may have this Action, Ferry. 1 and that without any Consideration, for his pay is certain, 22. Ass. 41.

If a Ferry-man undertake to carry any thing for me over the water, and by his default it taketh hurt, or is spoiled in, or after the carriage, while in his custody; I may have this remedy against him, Adjudged, Patridges Case. See chap. 7. As

If a Ferry-man take upon him to carry my horse over

over the River, and surcharge his Boat, so that my Horse is cast away; I may have this Action for it, 22 Aff. pl. 41. Action, &c. 40.

Retainer.

Breach of Trust.

If I retain one to purchase Land for me, and he doth it not; I may have this Action; but if he do his endeavour, no Action lieth; And yet if he be of counsel with the contrary party; Action lieth, 11 H. 6, 18. pl. 10. & 55. pl. 26.

But no Action will lie against a man for doing any thing of a necessity, and for publick good; as where a Ship, or Boat is over-laden, and in danger by a Tempest, and the passengers cast out the goods to save the mens lives, or pull down a House in time of fire, &c. Co. 12, 63. Dyer. 36. 8 Ed. 4, 23. 12 H. 8, 15.

To plow my Land.

If one agree to plow my Land, and doth it not at a seasonable time, when he may do it so; I may have this Action, 14 H. 6, 18. 3 H. 6, 36.

Upon a Sale.

If I be a Baker, and buy Corn of one, which he promiseth to deliver me such a day, and he doth not I may have this Action for it, Brownl. 1. part. 19.

Crannage.

This Action may lie against him that hath, and useth such a Crane, whereby my Goods put into it are spoiled, Lib. Intr. 3. C. sect. 1.

Licence abused.
Breach of trust.

Also this Action lies for abusing of a Licence, 21 Ed. 4, 76.

If a Feoffee to use, had not pleaded according to the directions of the Feoffee; the Feoffee might have had this Action, 14 H. 8, 24. B. pl. 2.

Nuisance.

If one have a Room over me in a City, or other place, and so carry himself in it, as to annoy me that am under him; as if he have a Shop, or Ware-house over me, and I have a Celler under it, and he lay such an extraordinary weight of Goods more than usually have been, and so break it down upon

upon me, and Trespasse me; I may have this Action for it, Popham, 46.

If a Guardian be to sue for an Infant, and do it not as he should faithfully, the Infant may have this remedy against him; Dyer. 361. Kelw. 135. Broo. 118. By a Guardian, breach of trust.

If one that ouget to es suit at my Court, or grind at my Mill, pay Toll at my Fair, or Market, or to agist my Land with his Cattle, refuse to do it, and do it not; I may have remedy by this Action, 7 H. 4. 9. 44. 21 H. 7. 16. 22 H. 6. 14. Brownl. 1. part. 204. Not doing suit to me.

If one procure a Commission of Bankrupts to be sued out against me of malice, and without good cause; it seems, if I have any special damage hereby, I may have this Action for my remedy, Stiles Rep. 3. chap. 17. sect. 6. case 30.

For suing out a Commission of Bankrupts.

C H A P. XIII.

Where an Action upon the Case shall be said to be gone and discharged, and what may be said a good Plea in discharge of it.

AS to this, it is to be known, That this Action of the Case, as it may arise many wayes, so it may also fall, and be determined again many wayes: And this is sometimes by the Act of God, as by death: And this is sometimes by the death of one of the parties, and sometimes by the death of another party; and sometimes this may be by the act of the parties themselves, or one of them; and so this Action may be gone and discharged, by a Judgment or Verdict in a former Action for the same cause, by the taking of a better Security, by a Release Sec. 1.

lease, Countermund, Accord, or by some other subsequent agreement between the parties themselves; by the determination of the Contract it self, upon which it is founded; and sometimes it is by the act of the parties themselves, and by the act of a stranger together; as by Arbitrement, &c. For the opening thereof, take these following Cases.

1. That an Action will be gone, where the foundation of it is gone: as when a Contract is determined, the Action annexed to, and dependant upon it is gone also,

By a Judgement, or Recovery in a former Action. Of a Contract.

2. If I bring an Action upon a Contract, and get a Judgement for damages in the Suit, hereby the Contract is determined, and no Action can be brought upon it afterwards, although Execution be not yet made, 9 Ed. 4. 54. Dyer. 21. 39 H. 6. 34.

If I have been barred in another Suit of another nature for the same cause, by Demurrer, or upon a Confession, or upon a Verdict, or by a Wager Law; this is an end of this Suit, and will be a bar to it for ever, 12 Ed. 4. 13. Estoppel. 78. Dyer. 130. Broo. sect. 197.

So if an Action of Debt hath been brought upon the Contract (it being an Executory Contract, and the Plaintiff hath recovered in it) by this; this Action is gone, and it may not now be sued in such a Case, Co. 4. 94. Cro. 1. 24.

But if another Suit be brought upon the same Cause, and no Judgement be had in it; this will not discharge the former Suit, nor may it be pleaded in Bar to it, Fitz. Action upon the Case. 105.

If an Action upon the Case be brought upon an Assumpsit, a Recovery or Bar in this Action, will be a good Bar in an Action of Debt brought upon the same Contract: So via versa Recovery, or Bar in

in an Action of Debt, as a good Bar in an Action upon the Case upon an Assumpsit, *Coo. 4. 94. 12 Ed. 4. 13. Broo. Action, &c. 105. 2 R. 3. 14.*

3. That a Retraxit entered by the Plaintiff in any such Action, will be a Bar to him in all other Actions of the like, or of an inferiour nature, *Coo. upon Lit. 139.* But that an Action is depending in an inferiour Court for the same Cause, is no Plea to the Bar in this Action, *Coo. 5. 61.*

4. This Action may determine and be gone, By the Death either of the party that doth, or of the party that suffereth the wrong; for it is a rule, that *Actio personalis moritur cum persona*: And this is to be understood of every wrong that is done *Ex malificio*; as by Battery, Slander, Conspiracy, by a Rescue, by the suffering of an Escape, and so for every wrong done *Ex malificio*, by Non-feasance, Feasance, and Dis-feasance, and the like, *Dyer 322. Coo. 9. 86. 93. Coo. 4.*

By death
of one of
the party.

So if I promise to appear the next Term in such a Court, and die before the Term; this is gone, *21 Ed. 4. 53.* But in case of Contracts for the payment of Money, and some other such like things, it is otherwise, for this is not so annexed to the person, as to die with him, *Dyer 114. Coo. upon Lit. 53.* for there the Action shall continue for, and again, the Executor and Administrator, who may charge and be charged upon it as the Intestate, or Testator himself might have done; and for this, see *Croo. 1.* last published 625. Where two Sheriffs were sued upon an Escape, and one of them died, that the Action did survive against the other. And the death of one of the Plaintiffs will not determine an Action of Trover and Conversion, *Bulstr. 2. part 262.*

If I be an Artift, and one promise me Ten pound to teach him in my Art Seven Years, and I die before the Seven Years end; by this the Contract is expired, and no Action will lie upon it: So that if the Money be not paid, it is lost, and my Executors or Administrators hath not remedy for it: And if it be paid to me, or secured by Bond; he that hath paid or secured it, is remediless, for I, and my Executors, and Administrators shall retain it, 21 Ed. 2. 12.

So if the Contract be, that I shall serve another man a Year for so much, and I die within the Year, 10 Ed. 4. 18. 10 H. 6. 25. And yet if in these Cases Money were to be paid Quarterly, and the death be not till the Quarter day be past, he may perhaps recover the last Quarters Rent, but the rest will be lost.

And yet if a Sheriff have Levied Money for me upon an Execution, and die; my remedy is not gone against him, as it is upon an Escape, Latch. Rep. 167. Dyer 271. 322.

An Assumpsit was brought by two, and one of them died between Verdict and Judgment; this did abate the Writ, and the Judgment was reversed, Croo. 1. last publisht 105. Bendl. 147. Bullstr. Rep. 262.

The Heir shall not be Charged for an Escape suffered by the Ancestors, Dyer 271. 322. See more in Latches Rep. 167, 168.

By the
death of
a stranger.

If an agreement be to pay so much for a thing sold, as I. S. shall set down, and I. S. die before he doth set down; the Contract is ended, and the Action gone, 14 H. 8. 19.

Sec. 2.

If I marry with A. Executor to B. her former Husband, and C. D. Indebted to the former Husband

band, promise me, that if I will forbear my Suit against him for this Debt till Michaelmas next, he will pay me, if she be dead at the time of the promise made, it is not good, but if she be alive at the time, and die after, it seems the promise is not gone by her death, Yelverton 84.

If a Debt be due to me upon an Executory Contract, and I take a Bond, or Bill Obligatory to it, or for a part of it of him that owes it; by this the whole Contract is determined, and the Action that lay upon the Contract discharged, and no Action can be brought upon it afterwards: But if the second Security be only a Writing, or Writing indented, or a Writing sealed only, and not sealed and delivered, and so made a Dæd; this will not determine the Contract. And if I take a Bond, or Bill, that is not good in Law, or that shall afterwards become void in Law; or a Bond or Bill is made to me for it, but I never accepted of it: Or if I take an Obligation that is good, and doth continue good, yet if it be from another person, and not the person that was bound by the promise; in these Cases the Contract is not determined, Dyer 21. 130. 21 H. 7. 5. F. N. B. 121. Co. 6. 45. 3 H. 4. 17. Fitz. Debt. 66. Goldsb. 155. pl. 84. Bro. Contract. 29. Brownl. 57. pl. 14 Yelverton. 171, Stiles Rep. 309.

So a second Assumpsit also may discharge the first Assumpsit, and consequently the Action upon it, Noys Rep. 140.

If there be a Parol agreement, and this be put in Writing to make a Dæd of it; the Parol agreement is gone, and no Action will lie upon it, Stiles Rep. 19.

A Contract, and the Action depending upon it,

C c 2

may

By the taking of a better security.

By Arbitrament, or accord,

may be discharged, and gone, by an Arbitrement made upon a Reference by both the parties thereto, 4 H. 6. 17. Hobb. pl. 27. 10 Ed. 4. 18.

So also by an Accord if it be Executed, otherwise not, Croo. 1. last publisht 305, 306.

By Abatement.

Where two Actions are brought, though of several Natures, and the one of them doth depend upon the other; the abatement of one of them shall abate the other, Stiles Rep. 5. But where one brings an Action for two things, and it will not lie for one of them, but a better Action will lie, there it shall for that part only: But if no better Action will lie, then it will abate for all, Croo. 11. 42.

By a subsequent Agreement, or Act.

If a Contract be between me and another, that he shall serve me a Year for so much, and he leave my Service, or we part by agreement within the Year; by either of these the Contract is gone, and the Action with it, 10 Ed. 4. 18. 10 H. 6. 25.

A Contract may be discharged by a Release in Deed, or in Law; so that if an Assumpsit be made to me by another, and I release it to him, or by two others, and I release to one of them; this is a discharge of the Contract and Action upon it, Hobb. Rep. 91.

If one be in Execution of my Suit, and another say to me, deliver him out of Execution, and what it cost you, I will repay. And before I do any thing, he doth forbid me in it, and saith, he will not stand to his promise; in this Case the promise is not discharged: For albeit one may discharge an Assumpsit made unto, yet he cannot discharge an Assumpsit made by himself, Croo. 2. 483.

Release.

A Parol promise, or Contract may be discharged, where it is Executory, and before it be broken by word of Mouth, for one Parol contract may be discharged

charged by another, eodem modo quo, &c. And there-
fore if the Plaintiff befoze any breach of the promise
discharge the other party of the promise; this will
determine it, and all Actions upon it, Pasche 24. Car. a Parol
1. B. R. Stiles Regist. 31. 75. Croo. 1. part 279. But also
ter a promise is broken, no Parol contract will dis-
charge it, Stiles Regist. 31. 75. Croo. 1. part 279.
Stiles Rep. 303.

A promise may be discharged by words, without
any Consideration at all, albeit it be made upon
Consideration: As if two agree, that one of them
shall go with him in such a Journey, and help him
in such a business, and that he shall have so much for
it: And befoze any thing done, it is agreed amongst
them, that nothing shall be done, or paid; this is
an end, and discharge of the promise, Croo. 2. 620.

If one promise to enfeoffe me of Land upon re-
quest, and I request, and he refuseth and after, and
befoze any Suit brought, he doth it, and I accept
it; now the Action is by this discharged, Bulstr. 1.
part 38, 39.

If a Physician or Chirurgeon be detained, and
engaged in a Cure; or a Carpenter in a Building
for me, and after, and befoze it be done, I dis-
charge him again, befoze the work is done, the
Contract is at an end; and this may be by word of
Mouth; and if there were a certain Sum to be paid
for the work, I must pay it all; if not, I must pay
for that which is done, what shall be reasonable,
18 Ed. 4. 8. 19 Ed. 4. 2. Bulstr. 2. part 333.

If one had promised to my Wife, whiles she
was sole, that if she would at his request Mar-
ry one Thomas Mason, that he after the death of
Thomas Mason would pay Forty Shillings a Year.
during her life, Thomas Mason by deed released him

By Release
&c.

of it, during the Marriage, all Actions, Quarrels, Demands and Controversies whatsoever; it was agreed to be no Discharge of this future promise; but if the Release had been of all Promises, or of all Actions, or Quarrels, that he or his Wife had, or might have against her Husband, or her; this had discharged the promise, Bendl. Rep. 147. Brownl. and Goldsb. 15. Hutton. 17. Croo. 2. 222. 571.

If one, in Consideration that I will lend him Ten pound, and release to him all demands, that he will do such a thing, and he doth release, to make himself capable of the promise; this Release of all demands shall not discharge this Assumpsit, Croo. 2, 623.

If one promise to me (that am a single woman) in Consideration that I will marry him, that if I over-live him, that he will leave me worth a Hundred pound, and I marry him, and he die; By These Judges, the Promise is not by this discharged, Brownl. and Goldsb. 18, 19. Hutton. 17. Croo. 2. 57. 571.

If the Promise be to pay Ten pound for Two Weights of Cozn delivered; and after he to whom the promise is made, in Consideration that some of the Cozn was drowned by Tempest, and that he that was to pay it, would pay a less Sum; he did discharge him of his promise; this is no good Discharge, for there is no Consideration of it; nor is it executed if the Money be not paid, Leon. Rep. pl. 23.

If an Assumpsit be to assure Land at Michaelmas next, and it is not done then, an Action may lie for this: But if afterwards the Parties agree, that if the thing be such a further day given to do it, that no benefit shall be taken upon the first Breach of Promise; in this Case, if this be
after

afterwards done accordingly, no advantage can be taken of the first Breach; for the Contract, and the Action depending upon it, is discharged by the latter agreement, Bulkr. 1. part 38, 39.

If a Contract be between me and A. that M. S. shall marry me by such a day, and before the day A. himself marry her; the Contract is determined, 21 Ed. 4. 53.

A Contract about a Lease-parol for Rent may determine by the Entry of one that hath a better Title, if he enter upon the whole: So, to say he had nothing in the Land at the time of the Lease, may be a good Plea in Bar, Finches Ley. 45. Lit. sect. 58. Broo. sect. 62. 135.

So if the Lessor himself enter upon the Land, for by this the Rent is suspended, and it cannot be Sued for, 9 Ed. 4. 1. Croo. 1. last publisht 150. 299, 300.

If one Sell me Trees from off the Land of his Wife for Money, and I Cut some of them before his Wife die, and so I be prevented to Cut the rest of them, yet I must pay all the Money: But if the Contract be to pay all the Money such a day, and not before, and I Cut part of them, and he die before the day; in this Case I shall not be forced to pay any of the Money, 18 Ed. 4. 6.

If I make a Lease-parol of Lands and Goods together, by one Contract, for one entire Sum of Money, and the Goods be taken from him by the right Owner, before the Money is paid, yet I may recover all the Money. So if I Sell two Horses for Ten pound, and one of them is another mans, who doth take him again from him; I may recover the whole Money: But he may have this Action upon the Case against me for the deceit; So where all

that is sold was another mans, and it be taken away by the right owner, Coo. 3. 23. 9 Ed. 4. 1. 7 H. 7. 4.

If one borrow a Horse of I. S. for such a Journey and then to be returned, and before it can be returned, the Owner take it away, this, it seems, will discharge for any Action before, Yelv. Rep. 22.

If one Sell me the Horse or Goods of ano her, for Money to be paid at a day, and before the day come, the true Owner doth take his Horse or Goods from me again; this doth not discharge the Debt, for the Seller will have his Action for the Money; but I may have Action for the Deceit, Finches Ley. 45. Coo. 3. 20.

If A. serve me a Prear, and I promise him twenty pound, and a Stranger depart within the time, the promise is gone.

If I be bound to pay another Money on a Contract, and a Stranger with my consent deliver him a Horse for it, without any new agreement; this doth not discharge the Debt, or Action for it, Brownl. 57. pl. 14. See more Croo. 1. last publisht 150. Croo. 1. 299.

C H A P. XIV.

Of the Process and Pleading in these Actions.

Against
whom the
Action
may be.
Sect. 1.

Declara-
tion.

That where a Joint-Action doth lie against divers, and some of their Names are, and some of them are not known; the Action may be brought against them that are known, with a Simul cum aliis, &c. Stiles Regist. 8.

There may be faults in the Declaration, that being Demurred unto, will make it naught; and that after Pleading, and a Verdict given for the Plain

Plaintiff, will be cured, and then will not hurt the Declaration, Croo. 1. last publisht. 427.

In an Action for a Non-feasance not guilty is not any Plea, for they are two Negatives, which cannot make an Issue, more than two Affirmatives, 32 H. 6, 23. Croo. 1. last publisht. 569.

Plea:

The Writ in this Action must be as certain as the Declaration, both for time and place; and it must have as much as is in the Count, but the year, and day, the quantity, and certainty of Land, where it must be shewed, 21 H. 7, 92. 38 H. 6, 9.

This Writ must not be vi & armis, but where there be two causes of the Action, Causa Causans, & Causa Causata, there the former may be said to be vi & armis, Croo. 9, 50.

Writ.

How the Writ must be about a Cure, 43 Ed. 3, 38. and 6. Writ. 627. About disturbance in a Franchize, 9 H. 6, 45. 20 H. 7, 1. About the escape of a Prisoner, N. B. 95. B. About Trover, &c. Croo. Process: 1, 63. Hutton. 394. See for this Croo. 1. last publisht. 79, 824, 829. Croo. 2, 307. The Process in Actions of the Case are the same with Action of Debt and Trespass, Stat. 10 H. 7. cap. 9. Croo. 10, 72. About this in all Cases, Croo. 1 part. 236, 7.

If the promise be grounded on a former Debt, Declaration in some cases it will be needful to shew the cause of on. the former Debt how it grew due; for this, see Stiles 548, 593, 642.

If one Contract with another to take his Son Apprentice, and find him Cloths, &c. And the Declaration is, that he did not find him Cloths, &c. but did not set forth that he was bound Apprentice; this is defective, Bulstr. 3. part. 221.

An Inducement to a promise need not to be alleged for certainty in a Declaration, as the things which

which are the foundation of the Action; and therefore it sufficeth to alledge them generally without certainty of name, and place, and person, Yelverton, 17.

Indebitatus existit.

If one declare that D. is indebted to him Forty pound, & sic indebitatus existens: In consideration inde assumpsit solvere upon request, &c. it was adjudged naught, because he doth not shew for what cause he was indebted: But where it is in consideration of Forbearance till such a day, or upon a special promise, there it may be good, so alledged, Croo. 2, 642.

Insimul computaverunt.

If one declare in Assumpsit, that the Defendant being to account with the Plaintiff pro diversis debitis insimul computaverint, and found upon account indebted so much. In consideration inde the same day promised payment thereof at a certain day, and it was held a good Declaration, albeit there were no forbearance of the Debt set forth, Bulstr. 3. part. 208.

The promise is supposed to be, provide for such a sick man necessaries, and I will pay for them, and he declared that he found him necessaries to such a sum, and did not set forth the particulars, yet it was resolved to be good, Bulstr. 3, 31.

Promise of two parts.

Where a promise is of two parts; or hath two branches, there he may lay the breach to be in either of them, Croo. 2, 195.

It doth generally suffice, and is most proper for the Plaintiff to lay the breach as the promise is made, Yelverton. 40.

If it appear by a mans own shewing, that he sues before his cause of Action doth arise (be the cause never so good) this Action is naught, Yelverton, 70. Bendl. 158. Hobb, 153.

There

There must be sufficient certainty in the Declaration, for uncertainty may mar it, See for this Yel-
 erton, 110, 111. Declarati-
on.
Certainty.

The Declaration was solvere, and said not to whom, yet adjudged good, Noys Rep. 38, 39.

A Declaration in an Action of the Case pro diversis mercimoniis is good; but not in an Action of Debt, Bendl. 139.

A consideration is not traversable upon an Assumpsit, but the general Issue is to be pleaded, and the Consideration must be given in evidence, Hetley. Rep. 59. Traverse.

In cases where a man is by promise to pay Money, or do some other thing upon Request, there must be a precise Request alledged, and the year, day, and place of the Request expressed, for the Defendant is not otherwise chargeable in an Assumpsit. And when a Defendant is chargeable upon a Collateral promise, and not for a mere Debt, there ought to be a request precisely alledged: But in an Assumpsit for Debt, where a duty was due before, that being but in a nature of a Debt, the general allegation, licet sæpius requisitus is sufficient, Croo. 2, 183. Request,
Sect. 2.

A Declaration sets forth a promise to pay cuidam Fountain, leaving out his name of Baptism, it seems not good, Stiles Rep. 153. Declarati-
on.
Uncertain-
ty.

An Action was brought upon an Indebitatus for a Hundred Weathers, sold by the Plaintiff to the Defendant, at Eighteen shillings a Sheep, which amounts to a Hundred and ninety pound; it seems, this mistake in casting makes the Declaration naught, Stiles. 214. Indebita-
tus.

The Declaration was, that whereas he sold to the Plaintiff a Pack of Wool for Twenty pound
 to Declarati-
on.

to be paid at a day certain, and licet sapius requisit, at such a day, and place, and he had not paid it: And that he sold the Defendant another Pack of Wool for Ten pound to be paid when required; Et licet similiter requisitus, &c. without alledging the day, and place; yet it was adjudged good, for it shall refer to the first day, Croo. 1 last publish. 240.

Declarati-
on.

In this Action upon an Assumpsit, if the consideration be Executory, then the Declaration must set forth the time and place when, and where made, and after it must be averred in fact, when it was performed and executed accordingly. But if it be by way of Reciprocal Agreement, then the Plaintiff may count, that in consideration he hath promised to the Defendant, the Defendant hath promised another thing to him, there he need not that the Declaration contain time or place for the consideration, or otherwise, that is performed and executed, Brownl. 137.

Reciprocal pro-
mises.

But if in the first case, where it is executory, and averred, that it is executed, there if the Defendant plead Non-Assumpsit generally, and do not plead the special matter, he cannot take exceptions to that Count for the default aforesaid, where he pleads specially to that, Brownl. 2, 137.

Of aver-
ment in an
Action
upon a
Contract.
Of a Con-
sideration.

If one promise to do something to me, in consideration of something to be done by me to him before it; If I will sue him for that he is to do for me, I must aver, that I have done that which was first to be done by me, and till that be done, I may not sue upon that promise: As if I promise to another, in Consideration that he will forbear his Debt till such a day, I will pay him; he must shew he did forbear, for if he sue for it within the time, the Assumpsit and Action is gone, otherwise it is where

where one promise is the Consideration of another promise, there nothing is to set forth, but the promise it self to maintain the Action, Curia. Mich. 4 Jac. B. R. Hill. 38 Eliz. B. R. Thorntons case, Hobb. Rep pl. 7, 27. 8 H. 8, 34. And if the thing to be done by me, in consideration of another thing to be done by another, be to be done at a place, and within a time certain, I must set it forth to be so done: And if all, or part of the consideration be to stand to an award, or make a surrender; it is not sufficient to say, that he was ready to do it, but he must say he hath done it, Mich. 9 Jac. B. R. Hoosebootes case. Bullstr. 1. part 109.

Declaration.

If A. in consideration that B. is indebted to C. a Hundred pound, promise, that if C. will forbear it till Michaelmas, that if B. pay it not, he will; in this case the cause of the first Debt need not be shewed, Ingrams case B. R. Hobb. Rep pl. 31, 32. Sir Moyle Finches case: Trin. 9 Jac. B. R. Deans case. But where it is grounded upon an Indebitatus Assumpsit, where the Debt it self is the consideration, there the ground of the first Debt must be shewed, But for the forbearance is another consideration, Coe. 10. 77. Pasche. 14 Jac. B. R. Fuller and Thorns case.

Indebitatus.

If I declare against an Executor, that the Testator was indebted to me in Ten pound, that the Executor, in consideration thereof, did promise to pay me; I must shew how the Debt did accrew, Mich. Jac. B. R. Ingrams case. But if the first cause be not good, albeit not shewed, and the Defendant shew. Quare if it will not overthrow the Action.

Executor.

If an Executor be sued upon the Assumpsit of the Testator, the Plaintiff need not shew that he hath

Executor
Assets.

both Assets, but if he have it not, the Defendant is to shew it, Coe, 9, 90. Hutton. 103. Hutton. 27. Croo. 2, 613. Brownl. 2. part. 138. Croo. 1. last publisht. 59. So in an Action upon an Account cast up, the Plaintiff need not shew how, or for what the Money was due to the Plaintiff upon the Account, Hobb. Rep. pl. 16. So if I sue one for a Debt, and another pray me to forbear my suit, and he will pay it; in my suit upon this promise I need not shew the cause of Debt I first sued for, Hobb. Rep. pl. 278.

A. declared against B. that he bought of B. a Horse for Twenty shillings paid in hand, and for Eleven pound more, to be paid at the death or marriage of A. for which he should become bound with him in writing Obligatory, B. in consideration hereof, promised to deliver the Horse on request. In this case if he sue for the Horse, he must shew he did offer to become bound with his surety, and in what sum in certain, and that he did offer to seal and deliver this Bond, Hobb. Rep. pl. 96, 97.

Quantum
meruit.

If one sue upon a promise to satisfy him for work done, he must shew in the Count how much he deserved for his work, Mich. 17 Jac. B. R. So if one sue for a thing sold, no price agreed upon, he must aver it to be worth so much.

If a promise be to deliver Twenty Sheep to me before the party shear his Flock; if I sue upon it, I must set forth that his Flock is shorn, Mich. 9 Jac. B. R. Cadels case. If I sue for a promise of a child's part; or as much as he shall give with any child, I must shew what he gave to another child in certain, Trin. 17 Jac. B. R.

If a promise be to pay for every farthing that a man doth lose by such a thing done, he will pay him
two

two pence; he that sueth, must shew how many farthings, Mich. 9 Jac. B. R. Coventries case. But to declare, that where the Defendant was indebted to the Plaintiff Ten pound, he promised to pay it; this is not good, without shewing for what, for it may be for a Rent, or a Lease, or an Obligation, in which cases this Action lies not, unless it be upon a Consideration of forbearance of such a Debt, Adjudged.

If one for good cause promise to deliver me For quarters of Wheat between Stirbridge Fair, and Christmas, if the Plaintiff like thereof at Stirbridge Fair; this is a good promise: But to raise the Action, the party to whom the promise is made, must shew his liking at Stirbridge Fair, and aver it in his Count; for it may not be done at another time, or place, Croo. 1. last publisht. 250.

Sect. 3.

If part of a Consideration onely be good, as being material and valuable, the performance thereof must be averred: But where a Consideration both consist of two or three parts, and every one of them is valuable; there of necessity he must shew the performance of every part thereof, Croo. 1. last publisht. 739.

Consideration of two parts.

Where there is a promise, for a promise there needs no averment of Execution of what is executory in the promise, Croo. 1. last publisht. 543.

Reciprocal promises.

Where it is sufficient to say, the Defendant indebtedatus fuit, without setting forth the penal cause of the Debt; and where not, Bulstr. 3, 206, 207.

And in all cases where a notice and demand is necessary to be made, to give an Action, therein averment must be made of it in the Declaration, when the Action is brought; and so for other like things, but for this thing, Croo. 1. last publisht. 73, 74, 85, 97.

The

The Plaintiff declared, the Defendant, in Consideration that the Plaintiff would be Bound for his Son, assumed to save him harmless from all such Obligations, as he at the request of his Son should enter into for him, and shewed that he was Bound for him such a day, and so, &c. which Obligation he was forced to satisfy, &c. And this was adjudged to be a good pleading, though he do not lay any request or notice, Mich. 9 Jac. B. R. Somershall and Barniby.

If a Suit be going to tryal, and the Defendant, in Consideration that the Plaintiff should not go to tryal, and give him a note of the charge, doth promise to pay him at his first coming to Gloucester; if in this case he sue upon this promise, he must aver not onely the forbearance of the Suit, and the giving a note of the charges, but also the giving notice of his first coming to Gloucester. Hobb. Rep. pl. 63.

In Trin. 9 Jac. It was agreed, that where a man is in debt to another Twenty pound, and he come to him, and desires him to forbear it till such a time; and that he will pay it at that time: That in this case, if he sue for the Twenty pound after the day; he need not shew how it did become due, But if one be indebted to another upon a simple Contract, and sue for it upon a promise to pay it, the Plaintiff must shew how the first Debt grew due, Bulstr. 1. part. 153. The Plaintiff set forth he had a Writ out in such a Term against the Defendant for Fifty pound, and the Defendant knowing of it, prayed him to go no further on that Writ, and he would pay him the Fifty pound upon request, that this was sufficient, without shewing the cause of the Debt, Hobb. pl. 147, 278.

A. declared against B. that he counted with the Defendant for divers Sums of Money; and upon the Account the Defendant was found in Arrear to him Ten pound, and in Consideration thereof did promise to pay it at such a day; this was Adjudged good, without shewing for what, for Mares, Money lent, &c. the last Debt was, Hobb. Rep. pl. 16.

A. declared, that the Defendant, in Consideration that he was Indebted to the Plaintiff Ten pound, for Pasturing certain Beasts in the Plaintiff's Ground, for Wheat, and other Merchandizes by him had of the Plaintiff, did promise to pay, and it was held good, Hobb. Rep. 70. 7.

But if one declare against an Executor, that whereas the Testator was Indebted to the Plaintiff Ten pound, and the Executor, in Consideration thereof, did assume to pay it; that this is not good, without shewing the first cause of the Debt, M. B. R. Ingrams Case.

A. in Consideration that B. was Indebted to C. Ten pound, in Consideration that B. would forbear it till Michaelmas, assumed, that if B. did not, he would pay it, M. B. R. Ingrams Case. Cook of Entries. fol. 2. And yet in these, and such like Cases, the Defendant shall shew that there was no cause of the first Debt; this may perhaps bar the Plaintiff.

If one for good cause promiseth to pay me Money at the day of my Marriage, he need not shew in his Declaration that he gave notice of the Marriage before he Married, but the Defendant is bound at his peril to take notice, and the general words, postea requisitus, will serve in the Count, without shewing the day, Croo. 1. 23. Adjudged.

Notice of Marriage.

Id u

where

Request.
pleaded.

Where Money is to be paid upon Request, there must be a precise Request alledged, Croo. 2. 183.

Where I put my Horse to an Hostler to keep for Six Pence day and night, and Sue for my Money, I need not set forth a Special Request, but Licit scipius Requisit, will be well enough: So in all Cases where the Ground of the Action is for the Debt, for the Law induceth the Promise, and the Request is not issuable, nor parcel of the Consideration: But otherwise, where the Action is founded upon a Collateral matter, and not upon the duty, for there the Request is issuable, and ought to be expressly alledged, Yelverton 66, 97.

And where Request is to be set forth, there is is Material and Traversable, and therefore the time and place thereof must be certainly set forth, Croo. 1. last publisht 179. And if this be omitted, the Declaration is not good, Bulst. 3. 298. 326.

And so in all other Cases where notice is to be given, or request, or demand to be made in Case to produce and warrant the Action, the same must be set forth in the pleading, and be made and done accordingly, See chap. 12. How it must be pleaded, See Croo. 2. 652. But in these Cases must be done sufficiently, by these general words, Licit scipius requisit, &c. Croo. 1. 280, 281. Croo. 1. part last publisht 35. 97. 455. Croo. 2. 235. Noys Rep. 98. Leonards Rep. pl. 159. 167.

Where there is a duty in the Plaintiff before, there the not alledging of a Request will not hurt: But where the Request makes it a Duty, there the Request must be precisely alledged, Godb. Rep. pl. 387.

If A. be bound to B. to pay Ten pound, when B. shall require it there a Request must be alledged to

to be made. If a Contract be made, and no time set when to pay the Money, and he sue for it before Request, he shall not have damages besides the duty, as he shall where he doth make Request, Godb. pl. 454.

About breach of Trust.

For Declarations in all Actions about Breach of Trust, See Dyer 266. Croo. 2. 262, 26.

About a Nuisance.

About a Nuisance, See 33 H. 6. 26. 2 H. 4. 11. Action, &c. 24. 11 R. 2. Action, &c. 36. Croo. 9. 53, 54. Croo. 8. 57. Croo. 9. 24. Croo. 1. last published 180, 427. 751. Croo. 2. 673. Yelverton 225. Winch. 16. Bendl. 160. Brownl. and Goldsb. 6. Leonard. pl. 236.

About a Deceit, See Croo. 1. last published 44. Lib. Intr. 685. sect. 1. N. B. 98. F. 20 H. 6. 34.

About a Deceit.

About a Trover and Conversion, See Dyer 121. Croo. 1. 378. Croo. 2. 50, 428. Croo. 1. last published 78. 378 480. 817, 818, 819. 865. 883. Hutton Rep. 10. Croo. 2. 129. 638. 664. Yelverton 43, 44. Bendl. 150. Noys Rep. 139. 145. Brownl. and Goldsb. 16, 17. Leonards Rep. 251. 335. Owens Rep. 27. 131. 141. 151.

About a Trover. Sect. 4.

About Bailment, See Owens Rep. 153.

About a Bailment of goods.

About Suits in Law, See Croo. 1. last published 57. 7 H. 6. 45. Action 4. Croo. 1. 33. Croo. 1. last published 53. 352. 877. 895. 913. Croo. 2. 241, 242. 351.

About Suits in Law.

Against a Hundred, See Croo. 1. 26. 29. Croo. 2, 350. Hobb. 339.

Against a Hundred.

About doing, not doing, mis-doing, See Croo. 1. last published 57. 11 R. 2. Action 36. 43 Ed. 3. 45 Ed. 3. 27. pl. 56. Action upon, &c. 50. other Dyer 312. 19 H. 6. 45. 20 H. 7. 1. Action upon, &c. 47. 30. Dyer 266. Croo. 2. 255.

About doing, not doing, mis-doing in cases.

About a Contract or Assumpsit, take these Rules,

About a Contract or Assumpsit.

1. That if any substantial Variance be between the laying of the Action, and the Evidence, it is dangerous, and therefore it is good Policy in an Action brought upon a promise; to ground it upon one promise in the substance of it, but to lay the promise divers ways, and in different words in the Declaration, as near to his Case as he can name it, that in one of them he may hit the promise it self; and to the intent that upon the Tryal, the Plaintiff may rest and rely upon that way of laying it, that his Witnesses are best able to prove, Mich. 24 Car. 1. B. R. Stiles Rep. 32. Hobb. pl. 114.

2. That he that declares upon an Assumpsit, must declare as the Case is; for if upon proof it appears that he alledge more things promised than true, or less than is true, and the Jury find a part of the things promised only, or more than is set forth he hath in his Action, the Plaintiff shall not have Judgment for this, Croo. 1. last publisht 147. 882.

3. That where a promise is the very Ground of the Action brought, there it must be pleaded, and set forth precisely; but where it is but the Inducement to the bringing of the Action, there it needs not to be so precisely set forth, Pasche 93. Car. 1. B. R. Stiles Regist. 31. Yelverton 17. 19. 40. 49. 50. 93. 128. See more Croo. 2. 183. 206, 207. 326. Croo. 1. 22. Croo. 2. 247. 289. 307. 404, 405. 541. 552. 603. 644. 652. 663, 664. Croo. 1. last publisht 149, 150. 193, 194. 245. 272. 302. 307. 337. 477. 487. 807. 848, 849. 882. Croo. 2. 10. 245. Bendl. 157. Noys Rep. 10. 50. Bulstr. 1. part 16. 124. The Action was laid, that the Plaintiff, in Consideration of Ten pound lent by him

to the Defendant, that he assumed to pay the same to the Plaintiff, Brownl. 2. part 40.

Where the Declaration is naught by mis-casting, or mis-counting, or not, See. Croo. 1. 22. 12 Jac. Bail and Gird Bendlhes 156. 201. Jenk. Century 7. Case 54. Sdoxes Case. Croo. 2. 569. Jenk. Century. 8. Case 13. Popham 200. Where otherwise, Godb. Rep. pl. 436. 484.

Where a man brings an Action of the Case for a thing that was Originally a Debt, the Plaintiff need not lay time or place of the Request: But where the Action is brought for a Collateral thing, there it is otherwise; there he must set down time and place for his Request, Winch. 2. And yet it was agreed by the Judges, that in an Action upon the Case upon Assumpsit to pay Money to the Plaintiff upon Request, that an actual Request must be alledged, Leonards Rep. pl. 389.

If the Action be grounded on a Promise or Consideration, that the party promising would assist him in the gathering of his Tithes, of Cheese, and Apples, and other Tithes, till such a time, he would pay him Twenty Shillings, and he sets forth that he did assist him so long in the gathering of his Tithes of Cheese and Apples, and said nothing of other Tithes; yet it is good, for Non-constat there are other Tithes, Mich. 7 Jac. B. R. Barker and Secker.

And for other Declarations on a Contract or Promise, See 3 H. 6. 36. Dyer 352. 328. 19 H. 6. 49. 3 H. 6. 36. 11 H. 6. 18. Croo. 1. last published 50. 59. Stiles Regist. 32. 16 H. 6. Action, &c. 44. 11 H. 6. 18. Action 7. Hobh. pl. 120. 114.

If one, for good cause, promise to pay, and to deliver to me Twenty Quarters of Corn the next

Seed-time, or the next Harvest; if I do not Sue till after Seed-time, or after Harvest, I need not in my Count set forth when the Seed-time, or Harvest was, Godb. Rep. pl. 445.

Where the Promise is, in Consideration of Eleven Shillings I. S. did promise to me, to carry certain Goods of mine Aboard such a Ship, if I deliver them to him; it will be safe for me in my Count to shew the time and place of the delivery of them, Godb. Rep. 485.

If a Physician promise to do his indeavour to Cure such a Disease, he must set down some place of doing his indeavour, Godb. Rep. pl. 490.

If one promise upon Request to deliver up an Obligation; it seems, this must be laid specially with time and place, and Licit sæpius requisit, is not sufficient, for here it is a Collateral matter: But where it is upon a Debt, or Contract, and not severed from the duty, there Licit sæpius requisitus is good, Huttons Rep. 73. 106.

Where in an Action upon the Case, upon Assumpsit two Considerations or more are laid in the Declaration, but they are not Collateral, but pursuant. As A. is Indebted to B. a Hundred pound, and A. promiseth to B. that in Consideration he oweth him a hundred pound, and in consideration that B. shall give to A. two shillings, that he will pay to him the said hundred pound at such a day. If B. bring an Action upon the case, upon this Assumpsit, and declare upon these two promises, although the consideration of two shillings be not perfozmed, yet the Action doth well lie: But if they be Collateral Considerations, which are not pursuant; as if I, in Consideration that you are of my Council, and shall ride with me to York, promise

mise to give to you Twenty pound; in this Case all the Considerations ought to be proved, otherwise this Action will not be maintainable, Leonards Rep. 405.

In the setting forth of a Consideration, where there is a reciprocal promise laid, there need not in the Declaration to be laid the payment of the Money, nor yet the time when the same is to be paid, for by the agreement the Law gives the party remedy to recover the Money agreed upon: But if the promise be laid thus, That if you do pay so much to me, then I will deliver to you such a Horse; here he ought to lay a special payment of the Money, or no Action will lie, for not delivery of the Horse, Bulstr. 2, 334.

Upon a promise to save a man harmless, a special Request must be alleged, and licet sapius requisit is not sufficient, B. Bulstr. 2, 229.

If one sell two weighs of Barley, and the buyer assume to pay for them, as the seller should have of any other, abating a penny onely in every Bushel; in this case he is in his Action brought, to shew what he sold it for to another, and that he gave no rice thereof before he brought his Action, Croo. 2, 432.

If in the Condition, or Consideration of a promise, a man be to do divers executoy things, and he shew that he hath done some of them, and that he was alwayes ready to do the rest; this is not good, for being futurely to be performed, they must be precisely alleged to be performed, otherwise no Action will lie upon it, Croo. 2, 583.

If one promise me, that if I will Travel with him to London, to help him to search for the Will of I. S. that he will pay me Four pound for my pains;

Request. Where the Consideration of the promise is to be well executed and performed, or not.

Sec. 5

paſſes; if I ſue for the Four pound, I muſt ſhew that I did Travel with him to London, and helped him to ſearch for the Will, &c. Croo. 2, 620.

If one, in Conſideration I will lend him Ten pound, and accept ſuch a Bond of, &c. and a Letter of Attorney to ſue it, and that I will releaſe to him all Actions and demands, doth aſſume, that if I cannot receive the Money of the Bond, that he will pay it me; now if I will ſue upon this, I muſt ſet forth all this to be executed, Croo. 2, 623.

If there be two caſes or Conſiderations of the promiſe alledged in the Declaration to be executed, and either of them is ſufficient, and one of them is well alledged, but the other is ill alledged; the whole Declaration is naught, Croo. 2, 504.

As the Defendant is bound by his promiſe, ſo alſo is the Plaintiff bound to ſhew the precise Conſideration agreed on, or of his part to be performed alſo, Yelverton, 177.

Where the Defendants Teſtator was indebted to the Plaintiff Three and thirty pound, and in Conſideration that he would forbear the Defendant till he had got an Execution on ſuch a Judgement, &c. he promiſed to pay the Three and thirty pound upon request; here it muſt be ſet forth by the Plaintiff that he had Execution upon the Judgement, but he need not ſhew how the firſt debt did ariſe, nor that the Executor had Aſſets, Coe. 2, 594.

If there be a talk between me and another about the buying of ſuch a Word of his, and in Conſideration of Ten ſhillings paid by me, and Twenty pound to be paid the Twentieth of December, in ſuch

such a place, and in Consideration that I will at such a day and place bring a sufficient man to be bound to him, to pay the Twenty pound to come, he assumes I shall injoy the Wood, &c. In this I must shew I brought a man, and that he was sufficient, and that they two were bound, or offered to be bound, Yelverton. 49, 50.

Where there is a Reciprocal promise in the case, there need not be any pursuit of performance of the Consideration, Bendl. 150.

The Defendant did promise that he would make such a conveyance of Land, and pleaded that he had made it, but said not where, this is good, and shall be intended upon the Land, March. Rep. 22.

An Action upon the Case upon an Indebitatus existit of an Assumpsit cannot be well brought, without shewing how he became indebted, for Merchandize, or for ready Money, Adjudged. Noys Rep. 146. Except it be upon a promise for forbearance, or the like, Brownl. and Goldsb. 14.

Where Non-Assumpsit is pleaded to a Consideration executed, the Plaintiff needs onely to prove the promise; for where the Consideration is Executory, the Defendant may take Issue as well for not performing the Consideration Executory, as upon the promise, Brownl. and Goldsb. 8. And where a man assumes to pay Money, or do any thing upon condition, the Defendant may take Issue upon the condition, and needs not plead Non-Assumpsit, but if he pleads Non-Assumpsit, then he cancellerth the performance of the condition, Brownl. and Goldsb. 10, 11.

Where in an Action upon the case, the Defendant was indebted to the Plaintiff Ten pound, without expressing the cause how it grew due; the
Des

Defendant, in Consideration that the Plaintiff, at the request of the Defendant, has then, and there given day to the Defendant till a day to come, to pay the Money, the Defendant promised to pay it; in this case the Action is maintainable, without shewing the cause for which the Debt was, Brownl. and Goldsb. 14.

In Trover and Conversion, it ought to be averred to be in a certain place, and so in Submission and Arbitrement, if they are contained in the Declaration, it need not to express any time, or place certain; but the Defendant pleads, that the Arbitrators made no award, or that the parties have not submitted to the award; there the Plaintiff may reply, that the Arbitrement or Submission was made at such a place, Brownl. 2. part. 137. See more for this in Croo. 2, 596.

Where
the breach
of perfor-
mance of
a promise,
is well
laid in
pleading
or nor.

If one assume, and declare, that he should enjoy such Lands according to his Lease; without let or Incumbance of any person, and shews that it was extended for Debt due to the King, by process out of the Exchequer, and so incumbez, &c. this is not well assigned, but he must shew for whose Debt, where, and by whom it was due, and so that it was a lawful incumbance, Croo. 2. 425.

Sect. 6.

If one promise to make an assurance of such as shall be reasonably devised; and the party to whom it was made devise a Feoffment, with Covenants to save harmless from incumbances, and to make a further assurance, and he refuseth to seal this; this is no breach, for he is not bound to seal such an one, Croo. 2. 571.

If one count for non-payment of Money, at the Plaintiffs next coming into Somerset, and that such a day he came there, and that the Defendant, though

Plaintiff, at
there
come, to
pay it;
without
Brownl.

the aver-
million
the De-
place
Arbi-
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though often requested, hath not paid, &c. This it
seems is good, without shewing that he gave notice
when he came into the County, Brownl. and Goldsb.
10, 11.

The promise was this, Marry my Daughter, and
when I come from London; I will give you a
Hundred pound; and the Action was laid thus, in
Consideration that he would marry A. promised to
pay the Plaintiff a Hundred pound after he return-
ed from London, when he was thereunto requested;
and for these words, when he was thereunto reques-
ted, the Action was maintainable, Goldsb. and
Brownl. 14.

If one, in Consideration of marriage, promise
to do three things, and he declares onely for one,
and saith nothing of the other two things; this is
not good, Godb. Rep. pl. 202.

If one, in Consideration of Forty pound given
him by another, do assume and promise to take his
Son Apprentice for Seven years, and to teach
him his Trade, and to find him, during that time,
Meat, Drink, and Apparel, &c. and he sues for not
finding him Meat, Drink, &c. in this Case he must
shew that he did take him to be his Apprentice, or
he is not bound to it, Bulltr. 3. part. 221. Croo. 2,
570.

See for this Owens Rep. 34. One in Consider-
ation of Five shillings, promised to do such an Act;
or if one give Ten pound to pay a Hundred pound
if she marry again; the damages are given ac-
cording to the Consideration, and if the Jury be
excessive, relief may be had in Chancery, Owens
Rep. 34.

If one bring an Action upon the Case for two
promises, the one for a Horse, the other for Money
lent,

lent, and at a tryal the Jury give the damages entire; this is good, Bulstr. 3. 258.

About the
Plea in
Bar.

To an Assumpsit, may be pleaded Non-Assumpsit, or a Concord, Lib. Intr. 6. 6. sect. 6. And he may plead Non-Assumpsit, albeit it be without Consideration, Pasche. 26 Eliz. B. R. But if the former were upon an entire sum, upon two Assumpsits, then no bar. Trin. 14 Jac. B. R. See more chap. 15. throughout.

A good bar, that he promised upon condition not performed, Lib. Intr. 5. D. sect. 1. Non emissit, the thing of him a good bar, Lib. Intr. 6. B. sect. 5.

That the Plaintiff discharged him of the bargain, a good bar, Lib. Intr. 685. C.

If one promise to B. to convey Land to such a one as he shall name, and after he doth by agreement between them, convey it to B. himself; this is a good bar to the Action, Mich. 13 Jac. Co. B.

No Traverse may be of a Consideration executed alone; but a Consideration executory may be traversed alone, Hobb. Rep. pl. 128. Trin. 14 Jac. B. R. Croo. 1. last publisht, 201. 250, 373.

In Trover and Conversion, the Conversion is traversable; and therefore time and place of Conversion must be set down in pleading, Croo. 1. last publisht. 97. 555, 201.

In case of a Warranty on a Contract, the cause and Warranty both must be traversed, whether it were deceitful, or not; to the Warranty is parcel of the Contract, 19 H. 6, 49. Action, &c. 10.

It is a good Plea to any such Action, if it set forth such a thing as by Law is a discharge on this Action, Yelverton. 22.

Where a Justice of Peace on a Trover ariseth, upon sale, there needs no Traverse of any more on the
the

the place alledged, and not the whole County; but if it be transitory; as for taking of goods, and the like, there the whole County must be traversed, Brownl. and Goldsb. 17.

For the pleading in all Cases and Actions, Croo. 1. last publisht. 551, 569.

About a Nuisance. See Croo. 1. last publisht. 285. About a Nuisance. Yelverton. 225. 210. 215.

About a Deceit, 16 H. 6. Action upon, &c. 44. 3 H. 7, 14. Croo. 1. last publisht, 247.

About a Trover. See Dyer. 121. 146, 174, 262, 366. Croo. 1. last publisht. 351. 352, 378, 433, 434, 435, 480, 486, 505, 540, 554, 566, 693, 763, 870, 901. Croo. 2. 68, 69, 256, 319. Century. 8.

Case. 45. 21 H. 5, 12. 30 H. 6, 7. 3 H. 7, 7. 13 H. 7, 21. 5 Ed. 4. 136. Yelverton. 45, 67, 198. Noys Rep. 41. Brownl. and Goldsb. 5.

About Bailment of Goods, Broo. sect. 82, 198, Noys Rep. 41. Brownl. and Goldsb. 5.

About Bailment of Goods, Broo. sect. 82. 198, 405. Yelverton. 22. Leonards Rep. pl. 269.

About Suits in Law, See Croo. 1. last publisht. 895, 913. 914.

About Doing, Not-doing, and Mis-doing in other cases, See Broo. sect. 382.

For disturbing a man in his Franchise, 38 H. 6. 15. Action, &c. 15.

For claim ing, and lying in wait for one as his Willain, 2 Ed. 4. 5. Action upon, &c. 16.

For burning a House, See 13 H. 6. Double, 31. Smith for pricking a Horse, Action, &c. 35.

For not repairing, Action upon, &c. 36. Croo. 1. last publisht. 285. Not finding a Chaplain, 22 H. 6, 45. Action upon, &c. 12.

About a Contract or Assumpsit, See Croo. 1. last pub-

About a Deceit.
About a Trover.

About a Bailment of Goods.
About Suits in Law.
About Feasance.
Non-feasance and Mis-feasance in other Cases

About a
Contract
or As-
sumpt.

publisht. 179, 201. Croo. 2. 234, 444, 587, 620, 690, 544, 359. upon an Indebitatus. Croo. 1. last publisht. 242. Yelverton. 114, 117. March. Rep. 77, 100. Hobb. 146. Noys Rep. 82. Popham. 207.

About buying and selling, 42. Ass. pl. 8. Action, &c. 42. 7 H. 8. 15, Action upon, &c. 27. 9 H. 6. 53. Bulstr. 1. part. 124, 155. See more Croo. 1. last publisht. 407, 250, 470. Hobb. 253.

For a Tro-
ver.

About a Trover, See Croo. 1. last publisht. 883. See more chap. 15. throughout.

About the
Trial.

For the Trial in these Actions, and where it must be, See Croo. 1. last publisht. 260, 242, 465, 466, 510, 625, 760, 761, 781, 547. Croo. 2. 492. Yelverton. 105. Noys Rep. 139. Brownl. and Goldsb. 7.

About the
Verdict.

For the Verdict in these Cases, See Croo. 1. last publisht. Dyer. 113. Croo. 1. last publisht. 392, 537, 660, 882, 884. Yelverton. 45, 77. Goldsb. Rep. pl. 387. Stiles. Rep. 335. Noys Rep. 82. See more Croo. 1, 39. Croo. 1. part last publisht. 79, 80, 107, 114, 171.

About the
Judgment

For the Judgement in these Actions, See Croo. 9, 93. N. B. of Entries. 2. C. sect. 3, 1. B. sect. 1. Croo. 1. last publisht. 465. Croo. 2, 442, 247. See more Dyer. 372. Croo. 1, 355, 356. Croo. 1. last publisht. 146.

About er-
rors in the
proceed-
ing, and
what may
be amen-
ded or
not.

For Errors in the proceeding, and what is amendable, or not, See Croo. 1. last publisht. 258, 260, 262, 276. 311, 489, 660, 781, 904, 74, 79, 91, 92, 107, 116, 134, 179, 180, 181, 194, 568. Croo. 2, 294, 295, 443, 493, 596, 247, 359, 397. Dyer. 98, 163. Croo. 1, 21, 22, 38, 64, 65, 117, 118, 159, 207, 236, 278. Bendl. 157. Noys Rep. 61. Brownl. and Goldsb. 15. Bulstr. 3, 161. See chap. 15. throughout.

C H A P. XV.

Some choice Cases for the Illustration, and Confirmation of all that is before said about Contracts and Assumpsits.

S E C T. I.

The Plaintiff having in such a Ground, Wheat, Case. 1.
and Rye sowed, and almost ready to be cut, sold
all his blades of Corn on this Ground (the Tithes
excepted) for sixteen pound to be paid at such a day
to come; this was adjudged a good bargain, *Coo. 4.*
Slades Case, 92. And in this Case it was agreed,

1. That upon every Executory Contract, there is Assumpsit implied.
an Assumpsit implied, and therefore upon this the
party to whom it is made, may upon it have an Action
of Debt, or Action upon the Case at his Election;
as if I sell Goods to another, and agree to deliver
it to another at a day to come, and the other, in
Consideration of this, agree to pay me Ten pound
for it; in this Case each of us may have either of
these Actions against the other upon this Contract,
and recover the entire Debt and damages, if there
be cause: And the recovery in one of these, will be
a bar in another Action for the same Cause, See Cases,
4. 41. Reciprocal Action

2. That if one assume to pay Money at divers
days, or to deliver me so much Corn every year
during my life; in this Case I may not have an
Action of Debt, till all the days be incurred, but
I may have an Action of the Case upon every default,
See after Cases, 19, 25, 28. and others, Case,
45: Assumpsit to pay Money at divers days.

3. That

Choice of
Action.

3. That in many Cases, a man for one cause may have his choice of one of two Actions; as against a Sheriff for the escape of one in Execution upon a Statute. Against the Lessor that shall out his Lease for years of Land, his Executors; or Administrators. Against him that shall distrain his Horse riding upon the Highway. Against him that shall distrain me, or my Tenants, to come to his Lette where I owe no service.

Bailment
of Goods.

4. If one deliver a Horse, or other thing to keep, and the party suffer it to be stoln, killed, or lost, the party damnified may either have this Action or Continue for it at his Election, See case. 2, 3.

Case 2.

Coo. 9, 86. Pinchons Case. It was agreed amongst other things,

1. Touching an Executory Contract, as in the first Resolution of the last Case.

Against
Executors

2. That an Action of the Case will lie against the Executors upon the Assumpsit of the Testator, expessed or implied; and no wager of Law shall be admitted in this Case. And yet see Case 73. whereby it appears the Law was taken to be otherwise in former times. But agreed by all the Judges, 20 Jac. See the Case in this Section afterwards, Case 225.

Action
personal
dyeth
with the
person.

3. That an Action personal (that is) founded upon a wrong, as upon an escape against a Goalor, and the like, is so annexed to the persons of the parties, that it perisheth with them: But it is otherwise in an Action of the Case grounded upon an Assumpsit for Debt, and the like; for an Assumpsit without Specialty, is no more personal than a Covenant by Specialty, and therefore dyeth not with the person.

4. That the Plaintiff need not to aver there are
Assets

Assets for Legacies; this is presumed, if not, the other party must plead in Bar, that there are not, Averment of Assets.
 See Case 3. afterwards. See Plow. 182. Accord. Assets.
 Norwood and Reads Case; where A. declared, that B. in Consideration of Forty shillings to him paid by the Plaintiff, assumed to deliver him Fifty Consideration of Corn at such a place, at two dayes, for ration, Thre and thirty pound six shillings eight pence, to money. be paid by the Plaintiff presently, after the deliver ry of the Corn (to wit) at each day Sixteen pound thirtien shillings four pence, and shewed that he was ready to receive it, and to pay his money at Corn: the dayes, but that the said B. did not deliver it, or any part of it at the day; nor that the Defendant, being his Executor, albeit he had Assets, &c. And the Defendant demurred to this Declaration: But it was agreed and adjudged, that the Declaration was good, and the Executors chargeable with the promise, See after Case 13.

William Bones Case, Co. 9. 93. The Executors Case 3. trix assumed to the Creditor, that if he would not sue, &c. he would pay him such a day, or assure him Executors chargeable.
 a Term of years, he marries; he sues upon the Case; but did not count that he had Assets at the time of the Assumpfit; in this Case it was agreed to be good, and yet if he had not Assets, that it is but Nudum pactum. But it shall be intended prima facie, that she hath Assets; and that the Assumpfit is good, although by it she will be charged in her own right: As if I, in Consideration you will forbear B. assume to pay you the Debt; for Confideration valuable.
 though I cannot be benefited by it, yet you may be damaged: But in this case she may if she can give in evidence that she hath not Assets, See case 2. before:

Case 4. *Assumpsit implied.* It was agreed, Mich. 4 Jac. B. R. in the Case of Sir Moyle Finch and Richardson,

*Confide-
ration.* 1. That if a Testator, for a due Debt, assume to pay the Money, that if he have Assets, he shall pay it: But if he promise to do some Collateral Act, as to enlarge a man out of Prison, or the like, and not for Debt; there it seems he is not chargeable. And in the first Case, if the Executor assume upon a forbearance to pay the Debt, that in this Case the Action may lie against him, and that this is a good Consideration, See after Case 42. And in that case it was held by Fenner, That if an Executor be chargeable in conscience only, and not in Law, and he promise to pay it; that by this he is become chargeable in Law.

Pledge.

2. Mich. 7. Jac. in Levets Case. B. R. It was agreed, that if Goods be delivered to me in pledge, and another man shall desire them, and assume to me, that if I will deliver them to him, that he will pay the Debt to me; that this is a good consideration, See Case 303.

*Confide-
ration va-
luable.
Forbear-
ance.*

3. Pasche 1 Jac. Co. B. in Austin and Woolmots Case. It was agreed, that if one be indebted to me Corn, or Money, and say to me, forbear till such a day, and I will pay you; this is a good Consideration: But if he say, forbear only, and say not, till a time certain, it is otherwise.

*Confide-
ration
past.*

4. Farmer and Heild. Pasche. 9 Jac. Co. B. It was agreed, that if one buy a Horse of me for Money, and another after the bargain say to me, if he pay you not the Money, I will; no Action will lie for this: But if the first bargain I made were at his Instance and Inducement, there it may be otherwise, See after Cases. 17, 30, 34, 56, 57, 59, 82, 85, 100, 139, 145, 170, 182, 189, 387, 394.

Action

Action upon the Case was brought in London by A. B. quod cum ipse possessionat fuit, of certain Wine, and other stuff (in certain) in such a Ship to the value of, &c. not shewing the place certain where he was possessed, and per god; and shewed that the Defendant such a day, year, and place, in London, assumed for Ten pound, that if the Ship and Goods came not safe to London, and were not landed there, that he would pay the Plaintiff a Hundred pound, and after that the Ship was robbed in the Sea, &c. And the bargain was made beyond Sea, and agreed that the Action notwithstanding was well brought, Broo. sect. 232.

Case 5.

Pleadings

Assumpfit
not local.

In the Case of Holme and Lucas, Croo. 1, 3. in Assumpfit, The Case was, the Writ and Declaration were, quod cum indebitatus fuit to the Plaintiff in fifteen pound, in Consideration thereof he assumed, and did not shew for what cause, for Merchandizes sold, Money lent, or other causes which lie in Contract: For if it were by Judgment, or specialty, or the like, which lies not in Contract, an Assumpfit in Consideration thereof will not lie, because damages recovered in an Assumpfit cannot be a bar to a Debt upon a Record, or Specialty; and it seemed to be agreed, that upon a Non-Assumpfit, being found for the Plaintiff, that it is good enough. But had the Defendant demurred to the Declaration, it had been naught, Presidents were to be charged, Et Curia ad visare vult. See afterwards, Cases 11, 31, 65, 145, 223, 229, 233, 248, 275, 299, 309, 353.

Case 6.

Indebita-
tus AC.
sumpsit.

Pleading.

Demurrer.

In the Case of Flight and Crasden, Croo. 1, 5. There was an Assumpfit by him, to whom the Obligation of Threescore pound was made, on Condition to pay Thirty pound the Ninth of May, the

Case 7.

Assumpfit

same

Consideration
good, to
pay a debt
due before
promise
to deliver
up the
Bond.

same day: That in Consideration the Plaintiff would pay the Defendant this Thirty pound, the same day that he would deliver him up his Bond to be Cancelled; and therein it was adjudged a good Consideration: As if a man promise, that if he will pay his Money in the Morning of the day, he will give him Five pound: this is a good Consideration; and if I have a Judgement for Five pound, and promise the Defendant for Four pound paid me in hand, to acknowledge satisfaction of the Judgement by a day; this is binding, if the Four pound be paid, Croo. 1. last publisht. 429. Reynold and Pinhow. M. 37. 38 Eliz. B. R.

Case 8.

Consideration
valuable,

To accept
a sum of
Money in
discharge
of all ac-
counts &c.
Promise
to give a
Release,
Executo-
ry.

In an Assumpsit between Farre and English. M. 1 Car. 1. B. R. the Count was, in Consideration that the Plaintiff would accept Twelve pound ten shillings of the Defendant, in discharge of all accounts between the Plaintiff, and this Defendants Brother, and seal an Acquittance to the use of his Brother, as should be required, the Defendant promised his Brother should seal the like to him: And in fact says, he did accept the Twelve pound ten shillings, &c. and sealed, &c. and that the Defendant hath not procured an Acquittance from his Brother. Found for the Plaintiff; and it was moved, that there is no sufficient Consideration why the Defendant should give this Twelve pound ten shillings; But not allowe, he paying, and the other receiving, it is enough.

2. Because he alledged he gave a general Acquittance, but shews none to the Court to judge the sufficiency.

3. Because it is said to be delivered to a stranger to the use of the Defendants Brother, who would, or could not deliver it to the party himself. Crook,

for

for the two last held the Declaration naught, but the other Justices contrary; for they held it good after the Plea, wherein he denied the promise, but not the performance: But if he had demurred because he shewed not the Acquittance, otherwise by Hubbard. Judgement for the Plaintiff, Croo. 1. 13.

Morris and Fletcher. Mich. 2 Car. 1. Co. B. The Plaintiff did count, That in Consideration he would marry the Defendants Daughter, the Defendant would pay such a sum of Money, and pay for the Wedding Apparel, and that he married her, and provided for her two Gowns, and two Petticoats, the Defendant licet sapius, &c. did demur to the Declaration, for that it was said, he ought to pay but for one Gown, and one Petticoat; and for other matters in the pleading, but adjudged for the Plaintiff, and held, that one Gown, and one Petticoat was not sufficient, Croo. 1, 38. See after Cases, 14, 17, 23, 24, 36, 37, 38, 37, 92, 115, 117, 129, 141, 197, 203, 211, 215, 231, 294, 389.

Rolt and Sharp in the Exchequer Chamber. Trin. 3 Car. 1. Error upon a Judgement given in an Assumpsit. The Plaintiff declared, that he made for A. S. a Gown, &c. which he kept for his Money; and the Defendant, in Consideration that he would deliver the Gown, &c. promised that he would pay as much as it was worth, he delivered it to A. S. and saith, it was worth, &c. And it was adjudged for the Plaintiff, and the Judgement affirmed.

1. Albeit she promised to pay, and laid not to whom.
2. Albeit the Consideration had nothing of benefit in it, to her that made the promise, by the delivery of the things.
3. Albeit he doth not alledge that he delivered

Pleading.

Case 9

Marriage.

How a promise shall be taken and performed

Case 10.

Consideration, the making & delivery of a garment by a Taylor.

Executory.

Promise of pay Certainty.

them to A. S. to her own proper use.

4. Albeit it were to pay tant. quant. &c. for this is the usual Course, Croo. 1, 55.

Case 11. Assumpsit. In Consideration that the Defendants dog had killed the Plaintiffs Sheep, and he would forbear to sue him, he would recompence him the first of May, &c. and that after he did request him to pay, &c. who refused, Defendant pleads, 21 Jac. chap. 16. the Action being grounded on a promise made six years before, Plaintiff demurred: And after agreement it was resolved, that the Action lieth, and is brought within the time, for although the promise was, 18 Jac. yet no cause of Action, till request of recompence, for the duty ariseth upon the request, and Non-payment after is the cause of Action. As an Assumpsit to pay if he marry A. S. or when he returns, &c. upon request; in this Case no Action can arise till the Marriage, or return, &c. and request made. Judgement was given for the Plaintiff, Croo. 1, 99. See after Cases, 34, 40, 43, 52, 60, 192, 69, 38, 78, 113, 140, 144, 159, 168, 186, 194, 220, 249, 250, 266, 261, 278, 299, 321, 322, 364, 375.

Case 12. Homes and Savil. Trin. 4. Car. 1. Co. B. The Plaintiff declared, That there being divers reckonings between them, Insimul computaverunt, and thereupon the Defendant was found in debt to the Plaintiff, which he promised to pay, and licet sapius, &c. he had not paid it, &c. After Non-Assumpsit, verdict for the Plaintiff, and motion to arrest the Judgement, for that the particular causes were not set down. But it was held by the whole Court, that soasmuch as the Account may be for divers Causes, and many things may be included therein, which in pede compoti is reduced to a sum

Consideration, the forbearance of a Suit for a Trespass.

Limitation of time for an Action, Request necessary.

Indebitatus Assumpsit.

Pleading.

ccr

certain, shewing that there is a ground for the Action, without shewing the particulars for what they accounted. And Judgement was given for the Plaintiff, Croo. 1, 82. See Case 6, before.

Mustard and Hopper. Mich. 31. 32 Eliz. B. R. Case 13. Assumpsit. The Plaintiff declared, that in Consideration the Defendant should enjoy such Goods, &c. he would pay the party five and twenty pound, upon Non-Assumpsit, the Jury find, that he promised to pay, if he enjoy such Goods, &c. And it was adjudged for the Defendant, for the Plaintiff declares of an absolute, and the Jury find a Conditional promise, Croo. 1. last publisht. 149.

Verdict
naught.

A. was indebted to B. a Merchant, upon an account, and died, and the Wife of A. doth Administer her Husbands Goods, and the Plaintiff B. declares, that he intended to sue her for his debt, and she requested him, that two friends might Survey the Account between her Husband and the Plaintiff, to which he agreed, and that they did survey it, and it appeared to them the debt was due, and that her deceased Husband had acknowledged it: And that she, dum sola fuit, in Consideration of the premises, did assume to pay it at a day certain; in this Case it was adjudged after a Verdict, and in a Writ of Error, that this was a good Consideration to charge the Wife de bonis propriis; as it is, in case she had promised, in Consideration she had Assets, or that the Plaintiff would forbear to sue her, or the like; so that the debt of her Husband is by this turned into her own debt, Pasche. 3 Car. 1. Co. B. Marsh against Culpepper and his Wife, in Hetleys Rep. 1, 8, 11. See Croo. 9, 94. and 6, 41. See before Case 2, 3.

Case 14.

Upon an
assumpsit,

Certainly
enough.

action a-
gainst
Husband
& Wife.

Cule against the Executors of Thorne. Pasche. 6 Car. 1. B. R. Assumpsit, that he would give with his

Case 15.

Against
executors
for more
for a mar-
riage por-
tion.

How ta-
ken.
certainty.

Averment

Daughter Sarah, as much as he gave any of his Daughters, if the Plaintiff married her, as he did. In fact he saith, he gave a Hundred pound with his other Daughter A. and a Bond of Fifty pound to be paid Three moneths after his death, if A. or any of her Issue were alive, and that A. is alive, That the Testator paid the Plaintiff Forty pound, and for the residue, and the like Bond, brings the Action against Executors Non-assumpsit, found for the Plaintiff, motion to arrest, it was adjudged for the Defendant. For 1. The promise extends to Money onely, and not to the Bond. 2. If it extend to the Bond, it must be averred, that Sarah, or some of her Issue be alive, and not that Alice is alive as was declared, Croo. 1, 134. See before Case 2.

Case 16.

Conside-
ration.
Delivery
of Money.
Promise
to redeli-
ver, How
taken,
Entire da-
mages.

Case 17.

Promise
money,
paid, and
to be paid,
Deceit.

A. delivered to B. the Eighth of May, a Hundred French Crowns, and the Ninth of May as many more, and B. in Consideration thereof, did then and there assume to deliver Six shillings in Silver for every Crown, upon a Non-Assumpsit, Verdict was given for the Plaintiff, and entire damages; and the Judgement was reversed, for the Assumpsit, goeth only to that which was last delivered, Mich. 42. 43 Eliz. Pisworths and Seals Case. See case 37.

Andrews brought an Action of the Case, and declared, that the Defendant for Twenty pound, whereof a moiety was paid, and therest a time set for it by the Contract, assumed to deliver Four Hundred pound of Wax to the Plaintiff such a day, and he at the day delivered to him Three hundred seventy three pound of bad Wax, warranting it to be good, and merchantable, by which he was damaged, &c. The Defendant pleaded an Accord made after, for Twenty pound of Wax, as well for the
ins

insufficiency, as for the residue not paid, and that he had paid it, and the other accepted of it, Judgement, &c. And the Plaintiff did demur, because the deceit was not answered: But the bar was held good: And that a Concord executed, is a good Plea in all Actions where nothing but damages are to be recovered: And the Arbitrement is a good Plea before it be executed, for debt will lie upon Arbitrement. And it was held, that the Deceit above was not material to be answered, for the Warranty of the sufficiency was after the Contract, so that there was no confidence in this Case. It was also held, that the Declaration was not good, because the same did not set forth the second day not to be come, and therefore it shall be intended to be past, and that the Consideration is not executed, for the Contract was, for Twenty pound, which is a condition, Andrews Case, Dyer. 75. See Case 18. after.

Pleading.

Concord.

Arbitrement,
Debt.

Warranty
after the
contract.

Consideration
executory.
Condition

The Servant of A. was arrested in London for Case 18. Trespass, and two of the Masters Friends bailed him, after A. promised to them, for their friendship to save them harmless from damages and costs, &c. If they be afterwards charged; this Action of the Case lieth not, for it is not a Consideration, for the bailing was of their own heads, and it is executed before the Assumpsit: But if the Master had requested this before, and the Assumpsit had been asserted ut supra, perhaps it may be otherwise. As in Consideration that you have married my Daughter at my request, I will give, &c. this is a good Consideration, because the marriage doth follow my request. As Land may be given in frank marriage after the marriage, Hunt and Bate, Dyer. 272. see Godb. Rep. 33. Accord. see case 34.

Consideration,
the
bailing of
a prisoner

Promise
to save
harmless.

Consideration
past, good.
Marriage.

Onely, brought an Action of the Case against the Countee

Assumpsit
of the
wife dum
sola fuit,
Considera-
tion, the
soliciting
of busi-
ness.
Promise
to pay
money,

Accord,

Confide-
ration a-
gainst law
Mainte-
nance,
Pleading,

Amends,

Arbitre-
ment,

Countess of Kent, and his Wife, and declared upon an Assumpsit, dum sola fuit, in Consideration that he had imployed great Travel, and had spent One thousand five hundred pound circa negotia & sectas of the Wife, that he would repay the One thousand five hundred pound, and Two hundred pound more. The Defendant by protestation, that the Plaintiff had not laid out One thousand five hundred pound, and that the Wife did not promise the Two hundred pound more for Plea, said, that the Plaintiff did lay out Ten pound about, &c. and no more; and that the Heir, in recompence of part of the Dower of the Wife, agreed to make a Lease to the Wife for years, to begin after her death, which the Wife caused to be made to the Plaintiff to her use, and after marriage the Countess agreed, that in satisfaction of the Plaintiff of the said Assumpsit for expences and travel, the Plaintiff should retain the Leases, and this at the request of the Plaintiff, upon this the Plaintiff did demur. Mowelson and Manwood, that the Consideration was against Law, for that it did import maintenance. Also the Plaintiff ought to have shewed what business, &c. Dyer, held it no maintenance to help a Widow in her business, but matter of charity: And that it was no satisfaction to retain a Lease, which was his own before, and of which no use could be limited. Also it was no advantage till the death of the Wife, where amends upon a Concord ought to be executed in the life of the Trespas, and before Action brought, and not at a day to come, which the party may refuse. Contra in Arbitrement: And yet an Arbitrement ought to be in appearance commodious to both parties, Manwood agreed, that it was no satisfaction, Dyer, 355. See case 16, be-

fore,

fore, and after Cases 61, 62, 64, 84, 110, 195, 206, 207, 256, 277, 292, 353.

Redman did assume to deliver to Peck Twenty quarters of Barley at the Feast of St. Michaelmas, every year during their lives, and that the Plaintiff should pay for every quarter Four shillings; Peck brought an Action of the Case for a failure Three years, and upon a Non-Assumpfit, it was found for the Plaintiff. And three Justices contra three, whether damages shall be asselt for the entire damages to come; which was uncertain, or for that which was past onely, Dyer. 113. See Coe. 4. in Slades case. Case 1. before. See case 17.

Promise to deliver Corn at divers dayes,

Damages; how to be asselt.

An Action of the Case was, supposing an Assumpfit to re-assure Land, was brought by the Lord Stafford against Alderman Howard. The Jury found that the Defendant did not assume in manner, &c. Notwithstanding, if H. and W. witnesses, have sworn true, as we judge they have, we say that he hath assumed; and if the Court so think, then we asselt damages. And by Dyer and Ayloffe, it was held clear, that the Verdict was for the Defendant, Dyer, 372.

Verdict imperfect.

Alfords case. The Servant made a Bill testifying the buying of Wax to be to the use of his Master, and this without Seal, by which he bound himself to pay the debt; debt lieth not against the Servant, but Action of the Case, for it is the debt of the Master, the Assumpfit of the Servant, Dyer, 230.

Case 22. Master & Servant. Assumpfit by the Servant.

In the Case of Thursby and Warren, Pasche. 5 Car. 1. B. R. It was resolved, That an Attorney may be a Solicitor for his Client in other Courts, as well as in his own Court, and allowable, and a promise to pay him for it is lawful, and no maintenance.

Case 23. Confidation unlawful.

Maintenance.

Limitation of time for the Action.

nance, 19 Ed. 4. 3. And here the Case is stronger. It was formerly expended at the Defendants request, and upon a Note given by agreement to a stranger, and a promise to pay it, if by him it shall be thought reasonable, which of it self is a good Consideration: And the Court agreed, That a Solicitor of an inferior rank, may take a recompence, and promise to pay it: But if a person of a superior rank do it, it were maintenance, Dyer. 356. 11 H. 6. 10. 32 H. 6. 15. An exception was taken that the Action was brought six years after the promise, and breach: But because not pleaded, the Original not certified, nor appearing when sued out, the Court regarded it not, Croo. 1, 113, 114.

Case 24.

Consideration of marriage.

Promise of twenty French Crowns.

Averment not necessary.

Pointer and Pointer. Trin. 6 Jac. B. R. The case was, If the Plaintiff would marry his Daughter, ad instantiam defendent, that he would give him Twenty pound, and Twenty French peices, &c. towards her Wedding-dinner, in fact, he did marry, Non-Assump. pro quer. motion to arrest: It was adjudged for the Plaintiff; And 1. Held, that he need not to aver that he married her ad instantiam defend. but that it shall be intended. 2. That Twenty French peices shall be taken for Twenty French Crowns, a common Coyne in France, and known to us here, Croo. 1, 141.

Case 25.

Consideration of marriage.

Pleading.

Pilchard and Kingston. M. 6 Car. 1. B. R. In Consideration that the Plaintiff marry Jane S. and that such Lands should be assured for her Foriture; Defendant promised the Plaintiff to pay him a Hundred pound, & firmam faceret Six hundred pound her portion; shews, that he at the Defendants request espoused, &c. And that the Defendant had not paid, nec firmam faceret, the Six hundred pound. Moved that the Declaration is naught, be

because not shewed that he might not have had the said portion, or that Jane S. had such a portion: Pleading. Court held it good enough, for it pursues the words of the Assumpsit in the breach alledged: And Certainty the words shall be taken for as much as a Warranty, that she should have such a portion. And it was adjudged for the Plaintiff, Croo. 1, 146, 147.

Promise
how taken

Mills and Mills. Hill. 7 Car. 1. B. R. Assumpsit, Case 26. in Consideration of Marriage, promised to pay Twenty pound, viz. Ten pound at Michaelmas, 1631. and Ten pound the residue at Michaelmas, 2632. Action brought for the non-payment of the first Ten pound, Twenty pound damages given, and two pence for costs; moved that the Action lies not till after Michaelmas, 1632. Court held the contrary, but otherwise upon a Bond. And that albeit the Jury had given Twenty, for both dayes (as it was objected) yet this shall be taken for the first day, and that the other shall be recovered when it becomes due. And it was adjudged for the Plaintiff, Croo. 1, 175. See Dyer. 113. see before cases 1, 19.

Assumpsit
to pay
money at
two days.

Damages.

Cooks and Dowze. Hill. 7 Car. 1. B. R. The Count was, That the Plaintiff had lent to one W. Twenty pound at the Defendants request; and that the Defendant, in Consideration the Plaintiff would rest content, and forbear the said money per paululum tempus, promised upon request he would pay it; and alledges in fact, that he forboze per paululum tempus, and required payment; And Error brought because the consideration was uncertain but adjudged well enough, for when the money was lent, and forborn, the Plaintiff, upon the Defendants request, agreed for a longer time, & alledges in

Case 27.

Consideration,
Forbearance for
a little
time.

Consideration. in-
certain.
Paululum
tempus.

in

and alledges in fact. that he forbore till the day of his Action, Croo. 1, 175. See Croo. 1. last publisht. 388. see Cases 386, 55, 144, 162, 174, 194, 283, 273.

Case 28. Buot and Read. Hill. 9 Car. 1. B. R. The case was, Whereas the Defendant was indebted to the Plaintiff for Kent arrear, in Consideration whereof he assumed to pay, &c. Being moved in Arrest, &c. It was held by the Court that the Action lies not; for it is a real Contract, if upon a Lease for years, and a general Assumpsit lies not for it, no more than upon a Recognizance: Also it may be a Kent charge, Kent seck, or Kent service; and then it is stronger against the Plaintiff: But if it had been alledged, in Consideration he should forbear till such a day, then it had been otherwise; it was adjudged for the Defendant. But this Case was agreed of Sir George Mansell, 17 Jac. who brought an Assumpsit against I. S. In consideration that the Defendant might have, and quietly enjoy, and have the herbage of such a park for Three years, he promised to pay Ten pound; this was said to be adjudged a good Assumpsit. Croo. 1, 250.

Case 29. Peck and Ambler. M 9 Car. 1. B. R. Assumpsit, That he should quietly enjoy the Lands, and that he would save him harmless against any Action against him for them; shews that he was ousted, and a Judgement had against him in an ejectione firmæ for them, The Defendant pleads, that all this was more than six years since, and so pleads the Statute. Court held because he failed of his promise to save harmless, but suffered this Judgement, to be against him, which is damage to the party, though execution be not taken out, that the Action well lies, and the Statute hinders not: And the damages shall be

Promise
to pay
Rent, in
conside-
ration of
forbear-
ance of
it, good,

not other-
wise.
Promise
to pay
Rent for a
herbage of
ground.

Promise
quietly to
enjoy
Land, and
to save
harmless.

entire, though the breach be but in part. As if one assume to pay Fifty quarters of Corn, &c. in five years, every year ten quarters, if he fail of payment for any, an Assumpsit lies, and damages shall be for all, Croo. 1, 254, 255, see before cases 1, 19, 25.

Damages.
Assumpsit
to pay
money at
divers
days.

25.

Langden and Stokes, M. 10 Car. 1. B. R. Assumpsit, Case 30. for a valuable Consideration to go such a Voyage in such a Ship, before August following, and alledges a breach in a non-performance. The Defendant pleaded, that before any breach, such a day, at such a place exoneravit eum of the promise; and the Plaintiff demurred: And it was adjudged for the Defendant, that this was a good discharge, without shewing how, Croo. 1, 279.

Promise
to go such
Voyage.
Discharge
of a pro-
mise.
Pleading.

Townsend and Hunt. Croo. 1, 295. Trin. 11 Car. 1. B. R. Assumpsit, in Consideration that at the Defendants request, the Plaintiff had sealed a Release, the Defendant assumed, &c. upon a Demurrer argued, that this promise being for a Consideration past, was void, Dyer, 172. Berkley agreed to this: But if it had been a Consideration continuing, as in Consideration of the Marriage of his Daughter, or Cousin, which is a gift in frank-marriage, it had been good: But Jones and Crook conceived it good; For if the promise had been made at the time of the Release made, it had been a good Consideration; and being made after, yet being made at the Defendants request, and he hath the benefit of the continuance of it; the promise upon this Consideration is good enough, and a Case between Riggs and Bullingham was cited; where, in Consideration that the Plaintiff, at the Defendants request, had granted the next avoidance of such a Church, the Defendant at a day after, promises to the

Case 31.
Confide-
ration
past.
Confide-
ration of a
Marriage.

the Plaintiff a Hundred pound: But in this principal Case all the Justices seriatim, delivered their opinions that it was good: And it was adjudged for the Plaintiff, See before Cases 4, 17. After 34.

Case 32.

Indebita-
tus As-
sumpsit.
Not good.

Foster and Smith. Hill. 1 Car. 1. Co. B. In consideration that the Defendant was indebted Seven pound he promised, &c. Non-Assumpsit. Found for the Plaintiff; motion to arrest, for that the Declaration did not shew the cause, for wares, or the like, yet Judgement was given against the Defendant, and that the Verdict did not help, Croo. 1, 21. See before Cases 6, 11.

Case 33.

Confide-
ration to
pass with
his boat
in a River.
Agree-
ment per-
fect and
good.

Promise
to pay
what J. S.
should set
down.

Notice.

Juxon and Thornhill. Mich. 4 Car. 1. B. R. One made Locks and Sluces upon his own Land, to exalt the River of Owse, and for the Rates that Boats should pay, there being a difference, upon a Petition to Manchester, President, to set down what should be paid, that the Defendant had carried for the Plaintiff divers tuns of Coal, and in consideration thereof, and that the Plaintiff would suffer him to pass thorow the Locks such a day, promised to pay what Manchester should set down; and he set down so much for every Tun, which came to, &c. he requested the Defendant to pay, &c. upon Non-Assumpsit, found for the Plaintiff, motion to arrest, Judgement was given for the Plaintiff, and said, that albeit the River be a common River, and the taking of sums here seemeth illegal, yet the owner may take for his passage on his own ground, and it is fit he should be paid what was agreed: And albeit no notice were given of the Order to the Defendant, for he is to take notice as he is of an Award, Croo. 1, 93. see Case 48.

Case 34.

Action and Symon. Mich. 11 Car. 1. Assumpsit, In consideration the Plaintiff would demise, &c.

pro

promised to pay the Rent of, &c. The Defendant pleads a Surrender, and Acceptance. After Verdict. Moved in Arrest, &c. That the Action lies not, because it is grounded on a personal promise, in a Real Contract, Bramstone, Jones, &c. held, it lies, for it is a Collateral and Absolute promise: But had it been upon an implied promise; as upon a sale of Goods, &c. it lies not, Crook doubted, because it is a personal Contract: And by the Lease made, the personal Contract is determined: For it is in vain to have Assumpfit, where he may have Debt upon a Lease: All the Court denied, for notwithstanding this promise, it is a Rent as before, and liable to suspension, &c. And these Justices agreed the Action to lie, as if it had been by Covenant, or Obligation further secured: But there ought to be an express promise proved, if he pleaded Non-Assumpfit: And that an implied promise would not serve. Berkley. If he recover damages to the value, it may be pleaded in Bar to an Action of Debt for the Rent. Bramstone and Crook denied. If one borrow money, and promise to enter into a Bond to pay it, and enters, that Bond determines the Contract. Crook denied this Case. It was by these Justices adjudged for the Plaintiff, Croo. 1, 299.

Sindham and Worthington. M. 27, 28 Eliz. Co. B. Assumpfit, Where one A. was sued in the Kings Bench by B. and the Plaintiff at the instance of the Defendant became Surety for him, and had execution against the Plaintiff, the Defendant afterwards promised the Plaintiff, that if A. did not pay the Money which the Plaintiff had paid to B. that the Defendant would pay it, and avers, that A. did not pay it, nor the Defendant upon request, &c.

If

Wind-

400 35

Conside-
ration
past.

Windham and Anderson at first held, the Action did not lie, because not made at the time of request: But after all, the Court held it a good consideration, by reason of the precedent request; and the Plaintiff had Judgement. And Anderson said, if I promise one that hath served me, I will give him Ten pound, this is Nudumpactum. Periam and Rhodes contra. And Rhodes said, if I require one to serve me, and he doth so for one year; and after the year, I promise him, in consideration of his service, to give him Ten pound; Action lieth: But if I agree with him to serve me a year for Twenty shillings, and after the year I pay him his Twenty shillings, and promise him Twenty shillings more; Action will not lie, Croo. 1. last published. 42. and in Leonards Rep. 2, page 224, 225. See before Cases 4, 7, 30. and in Case 9. the Case of Hunt and Bate, in Dy. 272. Agreed in this Case to be good Law. See it before in Case 17.

Case 36.

Conside-
ration to
make a
Lease.

Pleading
of a Con-
sideration
good;

Crispe and Golding. M. 28. 29 Eliz. B. R. Assumpsit, upon Non-Assumpsit found for the Plaintiff; Motion to arrest, for the Consideration was not well alledged; for he declared that I. S. was seized in Fee, and made a Lease to him for years, 24 Eliz. by virtue whereof he entred, and was possessed, and being so possessed, the Defendant, upon Communication between him and the Plaintiff, assumed, that if the Plaintiff would seal and deliver to him a Deed of Assignment of his Lease, and interest in the Land, he would pay him a Hundred pound, and alledged, that he did seal and deliver a Deed of grant, &c. But doth not say, he was then possessed, and if not, the Grant void, and no Consideration; nor doth he say, he did grant his Lease and Interest, but that he sealed and delivered a Deed

Decd of Grant. But it was adjudged for the Plaintiff, Croo. 1. last publisht. 50.

Marth and Cavenford. Trin. 29 Eliz. B. R. Assumpsit Count, That whereas at the request of the Defendant, there was a Communion of a Marriage between the Plaintiff, and the Daughter of the Defendant, and that afterwards he married her, that afterward the Defendant promised to pay him a Hundred pound. And it was adjudged, albeit it were after marriage, and that it is not said, the marriage was at the request of the Defendant; yet that there is a good Consideration, for natural affection doth continue, and her advancement is sufficient cause of the promise; And the Judges said, it was adjudged in the Exchequer, that a promise of Ten pound, in Consideration of Counsel given to one; this was good, though the counsel was given before, Croo. 1. last publisht. 59. See before Cases 9, 14, 17, 23, 24.

Case 37.

Consideration of a marriage Past,

Prat and his Wife, and Taylor. Mich. 29, 30 Eliz. B. R. Assumpsit, That the Wife of the Plaintiff, in Consideration that the Defendant should marry her Daughter, and she had given him Ten pound, he promised to the Wife, that if he did not marry her Daughter, he would repay the Ten pound, and avers he did not marry her; in this Case albeit the Husband did not expressly agree to it, yet it was adjudged that the Action was well brought, for the agreement of the Husband, by bringing of the Action, maketh the promise good, ab initio to the Husband, and it being made to her, they may joyn in the Action, Croo. 1. last publisht. 61. See Case 15. before, Case after, 38.

Marriage-Consideration. Money delivered to be repaid. Husband and Wife: Action brought by them:

Case 38.

Robert Brown and Vicar, and Garborough. M. 29. 30 Eliz. B. R. Assumpsit, he declareth of a promise

Case 39.

Husband
and Wife.
Action
brought
by them.

Confide-
ration of
Marriage
good..

mise made to the Wife dum sola fuit, and alledg-
eth, that where a Communication was between Jo.
Brown, Father of the Plaintiff Robert, and the
Defendant, Cousin of the said Robert Brown, and
the said feme, when she was sole, of a marriage to
be had between the said Plaintiff, and the said Jo.
Brown, promised to the feme, that if the Marriage
did take effect, that he would assure to them such
Land, &c. And the Defendant did then promise to
her, that if Jo. Brown did not perform his promise,
that the Defendant would give her a Hundred
pound; and alledges, that the Marriage did take
effect, and the Lands were not assured, &c. Upon
Non-Assumpsit found for the Plaintiff. And albeit
the woman were not near of kin to the Defendant,
yet the Consideration was held to be good; and
Judgement given for the Plaintiff, upon a Writ of
Error, and the first Judgement affirmed, Croo. 1.
last publisht. 63, 64.

Case 40.

Action for
Rent.

Confide-
ration
good, to
make
proof.

Sir Anthony Sturlin and Albany. 29. 30 Eliz. B.
R. The Case was, A. B. was indebted to me for
Rent divers years, on a Lease for life, and I de-
manding it, he assumed, that if I could shew him a
Deed, that the Rent was due, that he would pay it,
and the Arrearages. After I shewed him the Deed,
whereby, &c. and yet he had not paid Four years
in Arrear; upon Non-Assumpsit, found for the
Plaintiff, and damages assessed to as much as the
Rent and Arrearages; it was adjudged for the
Plaintiff: For when any thing is to be done by a
Plaintiff, be it never so small, it is sufficient Con-
sideration to ground the Action upon: And yet
there it was said to be adjudged; That when one
assumeth to another, that if he can shew him an
Obligation, in which he was bound to him, that he
would

would pay him, and he did shew the Obligation, that no Action will lie upon this Assumpsit, which was affirmed by the Justices, Croo. 1. last publisht, 67, See Cases 387, 213, 189, 237, 280, 338,

Devenly and Anne Welbore. Hill. 30 Eliz. B. R. Assumpsit against the Defendant as Executrix, of Case 41.

George Welbore, and declareth, that in Consideration that the Plaintiff would assure certain Lands to Thomas Percy, at the instance of the said George, he assumed, that if Tho. Percy did not pay him yearly, upon request Ten pounds, and ten load of Faggots, that he would pay them. And such in fact, that he did assure the Land, &c. to the said Thomas Percy, and that the said Tho. Percy, licet sepius requisit, did not pay the said Ten pound, and ten Load of Faggots, nor the said George in his life, nor the Defendant since his death; upon Non-Assumpsit it was found for the Plaintiff, and moved to arrest the Judgement, that the Declaration was not good; for the payment of the Ten pound was to be upon request, and request is material here, for otherwise the Defendant is not chargeable; Request, and therefore the same request, and the time and place thereof ought to have been expressly alledged; And so the Court held, and therefore Judgement was given against the Plaintiff, Croo. 1. part last publisht. 85. See Case 10. before. After 42, 192.

Assumpsit, Where the Defendant is a common Carrier from London to L. in the County of K. and retrorsum, and he delivered to him Three pound to be delivered at the B. in S. That the Defendant in consideratione premissarum, and for the Plaintiff did undertake rationabiliter to content him for the Carriage, promised safely to convey it thither and to deliver it at the said sign to the Plaintiff; and that he has not so done, upon

Certainty: Non-Assumpfit it was found for the Plaintiff. And it was said in arrest of Judgement, that the Declaration was not sufficient, because the same did set forth, that he was a common Carrier at the time of the delivery, but not that he is so now: But Judgement was given for the Plaintiff; and it was held, That the Consideration was sufficient, and that a Carrier may demand, and the other must pay what is reasonable: As a Taylor, and a Smith, it is usual to appoint them to make Garments, and to shoe Horses, and to say, they will content them, that let them a work; and such Contracts are good: And there it was said, That if one promise as much for his Tabling, as it shall be reasonably worth, with an Averment that he was with him so many weeks, and that it was worth so much a week: that this is good enough, Rogers and Head. M. 8 Jac. B. R. Croo. 2, 262.

Promise to pay it in London.

Good Contracts in Law:

Case 43. Trewinian and Howell. Hill. 30 Eliz. B. R. Error in a Judgement. The Case was this, A. was indebted to B. and died: The Executor of A. did assume, that if he had Assets, he would pay him; and this Action was brought, upon Non-Assumpfit found for the Plaintiff, who had Judgement, and Error was brought, and the Error assigned onely this, that the having of Goods was no good Consideration; but in Consideration he forbears to sue, &c. this was agreed to be a good Consideration; but in this was the first Judgement affirmed, and that the Execution shall be de bonis propriis: And there in it seemed to be agreed, that the promise of an Executor in such a Case, if he have Assets, shall bind him, otherwise not; and such a promise is good without any Consideration, Croo. 1. last published. 91. See before Case 4.

Confid-ration if he had Assets, that he would pay him.

Executor.

Assets.

Osbaston and Garton. H. 30 Ellz. B. R. Error of Case 44.
 a Judgement, in Assumpsit, where Garton declared
 that Osbaston did assume to pay to him for every
 stone of Wooll he delivered to him six shillings ten
 pence, and saith, that he delivered to him so many
 stone of Wooll as amounted to Thirty nine pound
 ten shillings. And saith, licet sepius requisit; &c.
 he had not paid; upon Non-Assumpsit, it was found
 against the Defendant, and Judgement given, and
 Error brought and assigned.

Conside-
 ration.
 Wooll de-
 livered.

Promise
 to pay
 money.

1. For that the day and place of the request is
 not set down; for this is not properly a Debt, but
 riseth by reason of the delivery of the stones of
 Wooll, and therefore ought to alledge an express
 Request, being a duty that agreeth with the com-
 mencement of the promise, and not before.

Request
 to be es-
 pecially
 alledged.

2. For that the Issue was, that he did not assume
 to pay the Thirty nine pound ten shillings, &c.
 which is not alledged in the Declaration, but that
 he assumed to pay for every stone of Wooll, six shil-
 lings ten pence, which amounted, &c. And so no
 Issue was joyned: And of that opinion for both
 points was the Court, and Judgement was reversed,
 Croo. 1. last publiht. 91. See before Cases 10, 34,
 40. After 71, 52, 60.

Pollard and Scoly. Pasche. 25 Eliz. Co. B. A. sold Case 45.
 to R. Dren, for Money to be paid at a day; at that
 day B. desires a longer day, and gave him time, pay-
 ing for the forbearance three quarters of Wheat,
 which was above the rate of the Statute; in this
 Case it was resolved, that this did not avoid the first
 Contract; but the last Contract was void, Croo. 1.
 last publiht. 20.

Usury.
 Contract
 unlawful.

Hun. and Stone. M. 30. 31 Eliz. B. R. An Assumpsit, That in Consideration he promised the
 Des

Conside-
ration to
enjoy
Land.

Promise
to pay
money
Yearly.

Pay ment
at several
dayes.

Cafe 46.
Contracts
by Mer-
chants.
Conside-
ration, de-
livery of
bills of
debt, to
be recei-
ved be-
yond Sea
promise
to pay so
much here

Defendant, that he should have, and occupy such Lands from such a day, for Five years, the Defens-
dant promised to pay him Twenty pound for every
year at two Feasts, &c. and avers, that he had oc-
cupied it for a year and a half, and for Thirty pound,
for that time brought this Action, and it was ad-
judged for the Plaintiff, albeit he did not aver that
the Defendant had enjoyed the Land for Five years:
But if the promise had been, that he should enjoy
the Land for Five years, and in Consideration
thereof, shall pay him a Hundred pound in Five
years, viz. Twenty pound per annum, there the
Action lieth not for part, till the Term be expired:
But the agreement being that he shall pay it by
Twenty pound a year, it is otherwise, and several
Actions lie for every day of payment. And Rhodes
Justice said, so it was lately adjudged in Sir Tho-
mas Joscelines Case; that in Consideration one
would marry with his Daughter, that he will pay
to him Three hundred pound, scilicet, Fifty pound
by the year during Six years, there at the end of
every year several Actions lie for Fifty pound,
Croo. 1. last publisht. 118, 119. See before Cases 19, 25

Pierfon and Hickled. M. 31. 32 Eliz. B. R. Er-
ror of a Judgement in the common Bench, Mich.
30. 31 Eliz. Rot. 3021. In an Assumpsit, where
the Plaintiff counts; that in Consideration he by
his Servant had delivered to the Defendant two
Bills of debt, of Three hundred French Crowns,
amounting to Fourscore pound, to be received at
Roane in Normandy, to his own use, he assigned
such a day, &c. and assumed to pay him Sixty one
pound; upon Non-Assumpsit it was found for the
Plaintiff, and he had Judgement and Error assig-
ned; that there is no Consideration to charge him,
for

17. 15.
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Defens
every
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pound,
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chap. 15. for Contract, and Assumpfit.

457

for it appeareth not how he could recover them; if he denied payment, nor that they were Bills made to the Plaintiff for what the Money was due, nor to whom; nor what benefit he may have upon them. 2. That this buying of Bills is maintenance. And for the first of these Causes the Judgement was reversed. But the Court held it no maintenance, but what is usual amongst Merchants. And Gawdie said, it is no maintenance to assign a debt with a Letter of Attorney, to sue for it, except it be assigned to be recovered, and the party to have part of it, Croo. 1. last publisht. 155, 170. See Cases 49, 226, 315, 327, 389, 391.

Conside-
ration.
Mainte-
nance.

Pearle and Unger. Pasche. 30 Eliz. B. R. Assump- Case 48.
fit, where he was possessed of certain Land for years, the Defendant, in Consideration that he had occupied the Land, and had paid the Rent to him Thirty pound a year all the time he had occupied it, he assumed to save him harmless for the occupation of the Land alwayes during the Term, as well for the years past, as to come; and alledges, that befoze the time of the promise, such a day, &c. his Beasts were taken damage-sealant, &c. and the Defendant had not saved him harmless of it; upon not guilty, found for the Plaintiff; Motion to arrest, it was adjudged for the Plaintiff, and that the Consideration he was in possession, had paid his Rent, and was to pay his Rent, is sufficient to cause the other to defend his possession for the time past, and to come, Croo. 1. last publisht. 94.

Conside-
ration
that he
had en-
joyed the
Land and
paid the
Rent.

Promised
to save
him harm-
less.

Coles Case. P. 30 Eliz. Co. B. R. Assumpfit, Case 49.
that where the Defendant was indebted to I. S. Twenty pound, in Consideration that the Plaintiff at the Defendants request, agreed to give his Bond for a debt

Conside-
ration to
engage
Bond

Promise to save him harmless from it.
Pleading. Bond to I. S. for the said Debt; the Defendant did assume to save him harmless, and altogether he did give his Bond, &c. and was sued upon it, &c. Upon Non-Assumpsit, it was found for the Plaintiff; moved in arrest, for that it was not alleged, that he had given notice that he had made the Bond, and was sued upon it; But it was adjudged for the Plaintiff, and held, that the Defendant at his peril must take notice of the Obligation, as to an Award.
Notice.
Award: And there Anderson held, that if one be obliged to make such Assurance as I. S. shall advise, he must take notice of the Assurance devised at his peril: But if it be such Assurance as my Counsel shall advise, there I must give notice of the assurance; and for the other point it was resolved, that he ought to save him harmless, without request; &c. Croo. 1. last publisht. 97. See Case 32.

Case 50. Ireland and Higgins. Hill. 31 Eliz. B. R. Assumpsit, That where he was possessor of a Greyhound, which come to the Defendants hands by Trover, that he promised to deliver it upon request. The Defendant demurred to the Declaration, pretending it was fera natura, and that he had no property in it; and was adjudged for the Plaintiff; and said, that a Pastiff, a Hound (which comprehends a Greyhound) a Spaniel, and a Tumbrel, are Dogs valuable, wherein a man may have a property, and about which actions are given, and may lie,
Promise to deliver the Plaintiffs Greyhound.
Averment Croo. 1. last publisht. 125, 126. And in this Action there needs no Averment that the Dog was tame, for that shall be intended, Owens Rep. 93.

Case 51. Scrogs and Griffin. M. 32. 33 Eliz. B. R. Assumpsit, That whereas one Brown, and another, did run for a wager of Five pound, which B. did win, and upon speech of it, the Plaintiff did affirm, there

here was deceit used in the Hatch: The Defendant ad tunc & ibidem, in Consideration of Twelve Pence delivered to him by the Plaintiff, assumed, that if he could prove there was deceit in the running, that he upon request would give him Forty shillings; in this case it was resolved by the Court, that the proof must be in the same Action, and that the Action includes proof and request; and the Plaintiff had Judgement, Croo. 1. last publisht. pay money 205.

Vivian and Skipping. Mich. 10. Car. 1. B. R. Upon Assumpfit, in Consideration the Plaintiff assumed to stand to the award of J. S. and I. D. and if he failed, to pay Forty pound, the Defendant assumed to pay Forty pound, if he did not perform, &c. Plaintiff shews that he performed on his part, and that the Defendant had not on his part; Defendant pleads nul. tale fecit Arbitrium, and found against him; moved in Arrest, but Judgement for the Plaintiff, for his pleading generally he had performed on his part, without shewing the particulars, is good enough; And that he need not shew a special Request for the payment of the Money. But that the general allegation licet sepius requisit was good enough, Croo. 1, 280. See Cases 192, 60, 92, 99.

Palmer and Knight. M. 10. Car. 1. B. R. Assumpfit, That the Defendant, in Consideration that the Plaintiff would cut and carry away such Trees, he promised he would save him harmless, shews that he did cut and carry, and was sued, &c. Upon Non-Assumpfit damages, &c. Motion to Arrest; Judgement was given against the Plaintiff, because it was not shewed in what Court he was sued, nor how he was damnified, and no notice and request was made, Croo. 1, 28. See for Notice. Cases 56, 92. Request.

Consideration. If the Plaintiff could prove deceit.

That upon Request he would pay money

To stand to an award, or pay money

Pleading.

Request.

Consideration to cut, and carry away Trees. Pleading. Promise to save harmless. Notice.

92, 161, 184, 197, 232, 237, 242, 276, 278, 307, 381, 397.

Case 54. Hall and Marshal. Pasche. 14 Car. 1. B. R. Error in Assumpsit for One hundred and thirty pound paid, and to be secured, for Consideration he sold all the Furzes, &c. and assumed that he would permit him quietly to enjoy them, and to carry them away, &c. before Michaelmas, quietly without disturbance; Defendant pleads that he was disturbed; Error assigned, because he shews not the time of the disturbance, whether before Michaelmas, or otherwise no cause of Action. Court. Being after Verdict, and Non-Assumpsit pleaded, it shall be intended within the time. Judgement affirmed, Croo. 1, 357.

Case 55. Canway and Aldiom, Croo. 1. 414. Hill. 15 Car. 1. B. R. In Assumpsit, The Plaintiff declared for amending one Boat, and divers others, the Defendant promised to pay him tant. quant. meruit. In fact, says, he deserves Thirty pound; upon Non-Assumpsit; found for the Plaintiff; moved in Arrest, &c. because he shewed not in certain what he amended, Croo. 5, 34. But it was agreed good enough for making a Gown, and divers other Suits of Apparel, at the Defendants request, and his promise to pay tantum quantum, &c. this is good. Judgement was given for the Plaintiff, Croo. 1. 414.

Case 56. Lutwich and Hussay. Pasche. 25 Eliz. Co. B. Assumpsit, where the Defendant was indebted to the Plaintiff, and the Father of the Defendant was also indebted to the Plaintiff in another sum, he did assume, that if the Plaintiff paululum cessaret, to demand the debt, which he did owe to him, that he would pay both the debts, and shews that upon this

this promise he did forbear the demand of his money for half a year, and for not payment of the Fathers debt, the Action was brought; Verdict for the Plaintiff; motion to arrest, for lack of Consideration, quod paululum cessaret; and so it was adjudged for the Defendant: And that the forbearance half a year did not amend the Case, Croo. 1. last publisht. 19. See in this Section Cases 70, 144, 162, 174, 194, 283, 383, 251. See Case 70, 264.

Bavoy and Hasall. Pasche. 31 Eliz. B. R. Assumpsit, where the Defendant had retained him to go from London to Paris in France, upon his occasions, he assumed to give him as much as would content him, and sheweth that he went thither, and was content to take five and twenty pound for his labour, and at such a place he requested the Defendant to pay it, &c. After Judgement for the Plaintiff, it was moved in Arrest, that he did not shew time and place of Notice of his Contentment, &c. But it was adjudged for the Plaintiff, Croo. 1. last publisht. 132, 133.

Case 57.
Consideration, that he had at his request done a work.
Promise to pay him to his content.
Notice.

Musket and Cole. P. 31 Eliz. B. R. Assumpsit, That in Consideration that the Plaintiff had paid to the Defendant Forty pound for the debt of J. Musket his Son, the Defendant assumed to deliver him all the Bills and Obligations, in which the said J. Musket was bound to him; and alledgeth in fact, a request and denial to deliver them: And Judgement was given for the Plaintiff after a Verdict, and motion to arrest it, for that the Plaintiff did not aver that the Defendant had any Bills or Obligations of J. Musket, Croo. 1. last publisht. 133.

Case 58.
Consideration that he had paid a debt, promise to deliver up Bills.

Kirby and Coles. Trin. 31 Eliz. B. R. Assumpsit, That

Consideration, the
payment of Three
shillings a Hog for
masking promise
to re-deliver
them.

That whereas speech was between the Plaintiff and Cooper about the masking of Hogs for the Plaintiff, in Consideration that the Plaintiff gave to Cooper Three shillings for every Hog well masked, the Defendant assumed that they should be well fattened, and re-delivered to him: To which promise he giveth credit, delivered to Cooper a Hundred and fifty Hogs to be masked: And Fifty of the Hogs being not re-delivered, he brings this Action; the Court after Verdict; motion to arrest Judgement, seemed to be of opinion with the Plaintiff, and that there was a good Consideration, for the promise was the cause of the Contract; and being made at the time of the Communication, it shall charge him, otherwise perhaps if it were made at another time: And there it was said to be adjudged, between Smith and Edmunds, where two Merchants were indebted one to the other, and they agreed to deliver all their Bills and Bonds into the Hands of the Defendant, he did assume that he would not deliver them till Actions were determined between them, he delivered to one of them, and the other party brought this Action, Croo. 1. last published. 137, 138.

Case 60.

Consideration
past.
Sale of
Land.

Promise
to make
an Assu-
rance,

Watcop and Morse. Trin. 31 Eliz. B. R. Assumpsit, That in Consideration he had bought of the Defendant three parcels of Land, upon the Tenth of December, he afterwards, viz. the Nineteenth of December, assumed to make him a sufficient assurance thereof before such a day; in this case it was adjudged for the Plaintiff, albeit the Consideration were executed; for the assurance was the substance of the Sale and Matter, Croo. 1. last published. 138. See before Cases 56, 57.

Case 61.

Wolman and Tye. P. 32 Eliz. B. R. The Defendant

dam did assume for good cause, that if the Plaintiff was ejected, during the Term, by him, or any other, that he would give him Forty seven pound, and shewed that he was ejected during the Term, and Judgement for the Plaintiff, a Writ to enquire of damages; moved in arrest of Judgement, for that he doth not say in his Court, by whom he was expelled. Gawdy at first held, that by the Plea of the Defendant, who had pleaded a special Plea, this matter was waived, and a demurrer was joyned upon the Plea: But it was adjudged, that this was a thing material and traversable, and without alledging of it, the Plaintiff had no cause of Action. And no Plea of the Defendant can make it good: As in an Assumpsit to do a thing upon request, if he doth not alledge the time and place of the Request, it is not good, and advantage may be taken of it: And after Non-Assumpsit pleaded, it was adjudged for the Defendant, Croo. 1. last publisht. 179.

Consideration, If ejected out of his Term to pay money Pleading. Request.

Stanton and Sullyard. Hill. 41 Eliz. B. R. Error Case 62. in the Erchequer Chamber of a Judgement, in the Queens Bench in an Assumpsit, wherein the Plaintiff declared, that he being Sheriff of Essex, the Defendant assumed, in Consideration that the Plaintiff would levy an Execution for the Defendant, to pay unto him such a sum (which was allowed by the Statute of 28 Eliz. for a Sheriff to take) Upon Non-Assumpsit, it was found and adjudged for the Plaintiff: And it was held by all the Judges, that it was a good Consideration, and that the Judgement should be admitted for that point. But it was reversed for another Error in the Case, Croo. 1. last publisht, 654. See cases in this Section, 18, 62.

Promise of Money by a Sheriff to do execution

Case 63.

Confide-
ration,
One ar-
rested to
go at
large.
Promise
to pay, or
appear at
the day.

Against
Law.

Millard and Clerk. M. 32. 33 Eliz. B. R. Assump-
sit, That where the Defendant was arrested at his
Suit upon Process, the Defendant, in Considera-
tion that he might be permitted to go at large, and
that the Plaintiff would give his Warrant to the
Bayliff that arrested him, to let him go at large,
that he would appear at the day of the Return of
the Process, or pay him Ten pound, and shewed
that he did give leave, &c. and did not appear, &c.
Upon Non-Assumpsit found for the Plaintiff; mo-
tion to arrest the Judgement, for the Assumpsit was
against Law, and void; yet it was adjudged for the
Plaintiff; but agreed, that if such an Assumpsit had
been made to the Sheriff, or his use, it had been a-
gainst the Statute, 23 H. 6. Croo. 1. last publisht.
190. See 200. there. In this Section. Cases 18, 61,
110.

Case 64.

Confide-
ration to
pay a
debt be-
fore due,
after the
day, with-
out Suit.

Promise
to deliver
a Bond of
a Debt
due from
another,
and to
give a
Letter of
Attorney,
to sue up-
on it.

Greenleaf and Barker. M. 32. 33 Eliz. B. R.
Error of a Judgement given in an Assumpsit in
Canterbury, That whereas the said B. brought an
Assumpsit, and declared, That whereas the said B.
was indebted to the said G. by Obligation, in Five
pound to be paid upon the first of November fol-
lowing; in Consideration that he the third of No-
vember following, at the Request of the Plaintiff,
would pay him the same five pound, without Suit
or trouble, he assumed to deliver him a Bond, in
which I. S. was indebted to him in Twenty shil-
lings, with a Letter of Attorney to sue for it, &c.
The Errors assigned.

1. That the Consideration was not good, for it
was to do that which the Law would compel him to
do: But if it had been to pay the Money before
the day, it were otherwise. So Gawdy and Fenner:
For every Consideration must be for the benefit of
the

the Defendant, or some other at his request, or a thing done by the Plaintiff, for which he laboureth, or hath prejudice. As 37 H. 6. to cure one; and in 20 Eliz. Co. B. between Worthington and Sydenham in an Assumpsit, That whereas he was Bail to I S. Servant of the Defendant in the Queens Bench, he did such a day assume to save him harmless: But not being alleged that it was at the time of the Bail, or before, nor at his request, but after it, without Consideration it was void, 9 Ed. 4. Concord to deliver to one his own Writings, was void.

Consideration not valuable.

2. For it is not to sue for, and recover the Twenty shillings to his own use, and it is rather a charge, than benefit to him: Gawdy and Fenner, one against the other in this; but both of opinion, that for lack of Consideration the Judgement should be reversed.

3. But 23 returned, or the Venire facias, whether aided by the Statute of Jeofailes, doubted; And there it was said to be adjudged, Pasche. 23 Eliz. Intr. Cook and Hewet, That in Consideration he would at the request of the Plaintiff, pay him Twenty pound upon a Bond at the day when it was due, he assumed to him to deliver the bond; this was adjudged a good Consideration: To this was said, that he was to deliver him the same bond: But here it was Collateral, and they would advise, Croo. 1. last publisht. 194. See in this Section, Case 76.

Mead and Pygot. P. 33 Eliz. B. R. Assumpsit, That whereas I. Arnold levied a Plaint in the Court of Stepney against Stokes, and a precept to attach the goods of Stokes, was directed to the Plaintiff, being Baylis there: and whereas he

Case 65.

Consideration to deliver goods attached to the Plaintiff.

Conside-
ration un-
lawful
Promise
to save
him harm-
less.

attached Stokes by two Quarters of Corn, and delivered them to the said Arnold, to deliver them at the next Court, the Defendant assumed to save him harmless of the said Corn. Upon Non-Assumpsit pleaded, and found for the Plaintiff, it was moved in arrest of Judgement, that the Consideration and promise was against Law, and so void: And so was the opinion of the Court. For first an Attachment cannot be of Corn out of Sacks. 2. If it may, it is to be kept by the Baylis, and he ought not to deliver them out of his hand to the Plaintiff, Croo. 1. part last publisht. 230.

Case 66. Read and Johnson. Trin. 33 Eliz. B. R. Assumpsit for four and twenty pound, and declares upon an Sur Inde- Indebitatus Assumpsit, the Jury found that the bitatus for Plaintiff let to the Defendant Land for seven years, Rent. rendring Rent Eight pound per Annum, and the Rent was Arrear for three years, and that the Defendant did owe no other Debt, or made any other promise, &c. And it was held by the Justices, that this Action did not lie, but onely an Action of Debt, Croo. 1. part last publisht. 242.

Case 67. Lacy and Lacy. Mich. 33. 34 Eliz. B. R. Assumpsit, That whereas the Defendant was possessed of a Lease for years, the Reversion to the Queen, in For money promised a consideration of Ten pound paid by the Plaintiff surrender of an old, and to get a new upon the procuring of a new Lease to the Plaintiff, the Defendant did promise to surrender his Lease, and to procure a new Lease to the Plaintiff, before the end of Trinity Term, and that he had not performed it; Upon Non-Assumpsit, found for the Plaintiff; motion to arrest, &c. for that the Declaration was not good, because he did not say he was ready to pay the other Ten pound at the end of Trinity

Term; it was adjudged for the Plaintiff, for it was not to be paid till the Defendant procured the leas, so he was to do the first Act. Croo. 1. last publisht. 249.

Brable and Holy-well. Mich. 33, 34 Eliz. B. R. Assumpſit, The Plaintiff counts, that the Defendant, upon a certain Consideration, promised to deliver to him Forty Quarters of Wheat, between Sturbridge-fair, and Christmas, if the Plaintiff liked thereof at Sturbridge-fair, and shewed, that he liked thereof; and upon the last of November at such a place, required the Defendant to deliver them, which was not done, &c. Upon Non-Assumpſit, found for the Plaintiff; motion to arrest, because he did not shew his liking in time and place, nor at Sturbridge-fair, but at another time and place long after; and therefore Judgement was given against the Defendant, Croo. 1. last publisht. 250.

Hues and Robetham, Executors of I. S. Assumpſit, That whereas 14 Apr. &c. the Plaintiff was possessed of a Lease for years, and the Testator was posselt of the Reversion for years, the Testator, in Consideration the Plaintiff would surrender to him all his estate, promised to give him Thirty pound, and alledges in fact, that 20 Apr. &c. he surrenders, &c. And upon Non-Assumpſit it was found for the Plaintiff; albeit he did not shew that the first estate did continue in him that did surrender, and albeit the first Term would not be drowned in the second Term; and it was adjudged for the Plaintiff, Croo. 1. last publisht. 302.

Jordan and Jordan. Hill. 37 Eliz. B. R. Assumpſit. and declares, whereas he sued a Writ of Latitat against

Case 68.

Promise, for money, to deliver Co n. How taken. Pleading.

Case 69.

Consideration of a surrender of a Lease. Promise of money.

Pleading.

Case 70.

Assumpsit
to one,
good for
another.

gainst the Defendant, intending it for a debt of Forty pound directed to the Sheriff of Wilts, and delivered it to I. S. to procure a Warrant from the Sheriff, to arrest the Defendant, and I. S. obtained a Warrant, that the Defendant, in Consideration that J. S. would forbear to arrest him, assumed to I. S. to appear in the Queens Bench at the day in the writ. or pay the debt, the which he did not; Non-Assumpsit, found against him; motion to arrest, because he declares upon a promise made to I. S. and not to himself, and it was adjudged for the Defendant, Croo. 1. last publisht. 369.

May and Alvares. Pasche, 37 Eliz. B. R. Assumpsit, and declares, whereas the Defendant was possessed de diversis bonis, of the Plaintiff, that the Defendant, in Consideration the Plaintiff would forbear the goods, promised to deliver them within Six moneths, and that the Defendant had not yet delivered them; Non-Assumpsit, found for the Plaintiff; motion to arrest: For that he saith to forbear, and saith not how long; this is no good Consideration; and although he say, he did forbear Six moneths; this will not help; and because he did not say what goods: But the Court held it good for both, and in such Cases, that the Plaintiff is to shew how long he did forbear, as here it was for Six moneths; and it was adjudged for the Plaintiff, Croo. 1. last publisht. 388. See in this Section, Case 55.

Consideration to
forbear
goods, no
time set,
good.

Uncertainty.

Perkins and Clerk, and Cleydon. M. 37. 38 Eliz. B. R. Assumpsit, The case was, a man devised his Land to be sold by I. S. his Executor, he sells it for Forty pound, and dies intestate, before his receipt of the Forty pound. Administration of the goods of the

Case 72.
Action by
an Exe-
cutor up-
on the
Assumpsit
of the
Testator.

the first Testator was committed to the Plaintiff, whether he should have an Assumpsit for this Forty pound, or have any other Remedy; Two Judges conceived the Administrator should not have an Action to recover it, Croo. 1. last publisht. 435.

Phillips and Sackford. M. 37. 38 Eliz. B. R. Cr. Case 73. of a Judgement in an Assumpsit, where the Plaintiff declares, That in Consideration the Plaintiff would forbear to sue one Brediman for Twenty pound debt, which he owed to him, that he assumed to pay the said Twenty pound before Michaelmas, and saith, he did not sue, &c. After Judgement it was assigned for Error, that he did not alledge a Request, but generally, licet sapius requisit, &c. 2. In the Consideration it was not shewed for what time he would forbear, and for the last cause it was after reversed, Croo. 1. last publisht. 455, see in this Section. Cases 55, 70.

Forbearance of Suit, promise to pay the debt.

Consideration in certain, not valuable:

M. 37. 38 Eliz. In the Exchequer Chamber, Case 74. Subbings and Rotheram. Error upon a Judgement given in an Assumpsit, ag inst an Executor upon a promise of the Testator, where the Plaintiff declared, that the Testator, in Consideration of a Marriage, promised to pay to the Plaintiff a Hundred pound, and for not performing promise, brought the Action, and Judgement there given for the Plaintiff: And this was assigned for Error, that the Action lay not against the Executor, and all the Justices and Barons (besides Clerk Baron) held it to be erroneous for this cause; for Anderson said, the reason why debt lies not against an Executor upon a Contract of the Testator, is, because the Law doth not intend that he is privy therunto, or can have notice thereof, and therefore cannot wage his Law herein, as the Testator might. And

This Action lyeth not against an Executor upon an Assumpsit of the Testator.

where debt will not lie, it is not fit this Action upon a bare promise should tie him, and it stands all upon one reason; and if these Actions should be allowable, it would be very mischievous, wherefore the Judgment was reversed. Quere, whether a Recovery in this Action against an Executor, is allowable against a debt upon an Obligation, if it should be an Administration, for it would be then mischievous to Executors, that they should be therein, and not have allowance thereof against other Creditors, for it may be at the time of the Recovery they did not know of other debts. Note this Term, the like Judgement was given between Griggs and Helhouse, in an Action brought against an Administrator upon a promise of the Intestate to pay moneys, &c. Croo. 1. last publisht. 454 455. And yet the Law is taken to be otherwise at this day, and divers Judgements are against it. See in this Section, Cases 2, 3 4, 14, 40 42, 43, 184. See all the Judges now agreed in it. Case 225.

Case 75

To stand
to an a-
ward.

Neve and Line. P. 38 Eliz. B. R. In Assumpsit, the Case was, That the Plaintiff declared, that whereas there were Controversies, &c. the Defendant in Consideration that the Plaintiff would submit himself to the Arbitration of I. D. &c. assumed, &c. and adjudged that it was good enough, albeit he said not that he would submit, and stand to the award of I. D. Croo. 1. last publisht. 460.

Case 75.

Promise
to make
such as-
surance of
Land, as
Council
shall ad-
vice

Clifton and Gibbon. P. 38 Eliz. B. R. Assumpsit, The Defendant assumed upon good Consideration, to make such assurance of Land, as the Plaintiffs Council should advise, and the Plaintiff adviseth himself without any Counsel, and requires such assurance to be made: And it was ruled by the Court

Court, that he is bound to do it, as he requires. And it was adjudged accordingly for the Plaintiff, Croo.

1. last publiſht. 465. 466.

M. 29 Eliz. in Scaccario. Dixon and Adams. *Caſe 77.*
 Aſſumpſit, For that I. S. and I. D. were obliged to Adams in Forty pound, and thereupon he ſued I. S. in the Queens Bench, in which Suit Dixon became Bail. Adams recovered, and upon a Scire facias againſt Dixon the Bail, had Judgement againſt him, and he, without other Proceſs, paid the Condemnation; and Adams, in conſideratione inde, aſſumed to Dixon, to deliver to him the principal Obligation, and a Letter of Attorney to ſue it againſt I. D. And for not performance hereof, the Action was brought; and upon Non-Aſſumpſit, found for the Plaintiff, he had Judgement, and Error brought, becauſe it was not a ſufficient Conſideration, and ſo held by the Court: For Dixon had not done any Act, whereto the Law would not have compelled him; wherefore the Judgement was reverſed, Croo. 1. laſt publiſht. 538. See caſe 63.

Conſideration, Bail paid the debt after judgment. The Creditor promiſes him the Bond, and letter of Attorney, to ſue the principal. Conſideration invaluable.

Gower and Capper. H. 39 Eliz. B. R. Aſſumpſit, *Caſe 98.*
 and declares, whereas the Defendant was indebted to him by Bill in Twenty pound; that the Defendant, in Conſideration the Plaintiff aſſumed to deliver him the ſaid Bill, he aſſumed to procure two ſufficient Sureties, to be bound to the Plaintiff for the payment of the ſaid Twenty pound, and allegeth in fact, that he delivered the ſaid Bill to the Defendant, and that he, intending to deceive the Plaintiff, produced two Sureties to be bound that were of no value; The Defendant pleads, that the Plaintiff had not delivered to him the ſaid Bill; and it was thereupon demurred: And without Argument adjudged for

Conſideration, to deliver up his Bill for a debt. Promiſe to bring two Sureties to be bound for it.

Where debt will not lie, it is not fit this Action upon a bare promise should tie him, and it stands all upon one reason; and if these Actions should be allowable, it would be very mischievous, wherefore the Judgment was reversed. Quere, whether a Recovery in this Action against an Executor, is allowable against a debt upon an Obligation, if it should be an Administration, for it would be then mischievous to Executors, that they should be therein, and not have allowance thereof against other Creditors, for it may be at the time of the Recovery they did not know of other debts. Note this Term, the like Judgement was given between Griggs and Helhouse, in an Action brought by an Administrator upon a promise of the Defendant to pay moneys, &c. Croo. 1. last p. 460. And yet the Law is taken to be otherwise this day, and divers Judgements to that effect in this Section, Cases 2, 3, 4. See all the Judges now agree.

Neve and Line. P. 38 Eliz.

Case 75

To stand
to answer
award.

the Case was, That the Defendant, whereas there were Controversies between him and the Plaintiff, did submit himself to the Arbitration of I. D. Croo. 1. last published, &c. and adjudged that it was good enough, albeit he said not that he would submit, and stand to the award of I. D. Croo. 1. last published. 460.

Clifton and Gibbon. P. 38 Eliz. B. R. Assumpsit,

Case 76.

Promise
to make
such assurance
of Land, as
Council
shall advise.

The Defendant assumed upon good Consideration, to make such assurance of Land, as the Plaintiffs Council should advise, and the Plaintiff adviseth himself without any Counsel, and requires such assurance to be made: And it was ruled by the Court

Court, that he is bound to do it, as he requires. And it was adjudged accordingly for the Plaintiff, Croo. 1. last publisht. 465. 466.

M. 29 Eliz. in Scaccario. Dixon and Adams. Case 77. Assumpsit, For that I. S. and I. D. were obliged to Adams in Forty pound, and thereupon he sued I. S. in the Queens Bench, in which Suit Dixon became Bail. Adams recovered, and upon a Scire facias against Dixon the Bail, had Judgement against him, and he, without other Process, paid the Condemnation; and Adams, in consideratione inde, assumed to Dixon, to deliver to him the principal Obligation, and a Letter of Attorney to sue it against I. D. And for not performance hereof, the Action was brought; and upon Non-Assumpsit, found for the Plaintiff, he had Judgement, and Error brought, because it was not a sufficient Consideration, and so held by the Court: For Dixon had not done any Act, whereto the Law would not have compelled him; wherefore the Judgement was reversed, Croo. 1. last publisht. 538. See case 63.

Consideration, Bail paid the debt after judgment. The Creditor promises him the Bond, and letter of Attorney, to sue the principal. Consideration invaluable.

Gower and Capper. H. 39 Eliz. B. R. Assumpsit, Case 98. and declares, whereas the Defendant was indebted to him by Bill in Twenty pound; that the Defendant, in Consideration the Plaintiff assumed to deliver him the said Bill, he assumed to procure two sufficient Sureties, to be bound to the Plaintiff for the payment of the said Twenty pound, and alleogeth in fact, that he delivered the said Bill to the Defendant, and that he, intending to deceive the Plaintiff, produced two Sureties to be bound that were of no value; The Defendant pleads, that the Plaintiff had not delivered to him the said Bill; and it was thereupon demurred: And without Argument adjudged

Consideration, to deliver up his Bill for a debt. Promise to bring two Sureties to be bound for it.

Reciprocal promises.

for the Plaintiff; for the alledging that he had delivered the Will, was but Surplusage; for the consideration was the promise to deliver it, and therefore he needed not to shew that he had done it: For a promise against a promise is a sufficient ground of an Action: And although it be alledged, that he found Sureties, yet being said they were insufficient, and so admitted by the Defendants Plea and Demurrer, it is all one as if he had never found Sureties, wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 543.

Case 79. Rosse and Mosse. P. 39 Eliz. B. R. Error brought in the Exchequer Chamber, of a Judgement given in the Duens Bench in an Assumpsit, where the Plaintiff declared, That in Consideration he would relinquish such a Suit, the Defendant promised to discharge him against all Suits of I. S. And alledges in fact, that he relinquished his Action; and that the Defendant had not discharged him of such an Action; and Judgement was given for the Plaintiff. And Error brought and assigned, That this is not any Consideration, for he may relinquish it to day, and afterwards begin it again, he ought also to have averred, that the Action that he was to discharge, was actionable: And for both these causes it was held to be Error, and the Judgement was reversed, Croo. 1. last publisht. 561.

Case 80. Fereby and Lurkin. Pasche. 39 Eliz. Com. B. Assumpsit, and declares, That the Defendant, in Consideration the Plaintiff would make a Lease to him of such Land, assumed to pay Twenty pound; and alledged in fact, That he had let the Land to the Defendant for five years, and the Defendant had not paid him the Twenty pound; Non-Assumpsit, found for the Plaintiff; motion to arrest Judge.

Consideration to relinquish a Suit.
Promise to discharge him against all suits of I. S.

Consideration to make a Lease of Land.
Promise of money for it,

Judgement, That the Plaintiff had not performed the Consideration, and that it shall be intended a Lease for life: But the Court held, That the promise being general to make a Lease, it may be any Lease, viz. at will, which he might determine presently; and therefore not any consideration to ground an Action; wherefore the Judgement was stayed, Croo. 1. last publisht. 566.

Consideration not valuable.

Mature and West. P. 41 Eliz. Co. B. Assumpsit, whereas the Defendant was indebted to him in such a sum, in Consideration that the Plaintiff would give unto him day of payment, that the Defendant assumed to pay at the day, and alledges, that he gave unto him such a day, and that the Defendant had not paid: Non-Assumpsit, found against the Defendant; it was moved that it was no good Consideration, for it is at the Plaintiffs liberty, what day he will give, so as he may give the same day the Assumpsit was made, if he will, and so it will not be any benefit to the Defendant. But the Court held it to be well enough. For it is alledged, that he forbear it for such a time certain; wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 665.

Case 81.

Upon forbearance of a debt, promise to pay it. Give day of payment.

Certainty.

Sherwood and Woodward. M. 41 Eliz. B. R. Case 82. Assumpsit, whereas he sold to the Defendants Son certain weighs of Chale; The Defendant, in Consideration the Plaintiff would deliver it to his Son, assumed, that if the Son did not pay for them, then he would: And for Non-payment the Action was brought: Non-Assumpsit, found for the Plaintiff; motion to arrest, for that it was no Consideration, to do what he by Law is bound to do, it being his goods by the sale: But it was adjudged a good Consideration, for it is an ease to the Bargainers

For Cheef sold to a Son, promise to pay money Consideration valuable.

gaine to have them without Suit: So to deliver the Goods of the party himself at another place, Croo. 1. last publisht, 700.

Case 83.

Confid-
eration to
pay ano-
thers debt
promise
to repay
it.

No Consi-
deration.

Mutual
promises.

Declarati-
on.

Wichals and Johns M. 41 Eliz. B. R. Assumpsit, and declares, that in Consideration that the Plain-
tiff, at the instance of the Defendant, had promised to pay a Hundred and twenty pound to one Rogers, wherein the Defendant was indebted to the said Rogers, That the Defendant assumed, that he would pay to the Plaintiff this Hundred and twenty pound, when he should be required: After Verdict for the Plaintiff it was moved, that this is not any Consideration, for it is no benefit to the Defendant, he is not hereby discharged of his debt: And it is not alledged, that he paid it to Rogers, nor is the promise alledged to be made to Rogers, and if it had been made to Rogers, he could not thereupon have maintained an Action against the Plaintiff; for there was not any Consideration between them: And of that opinion were Gawdy and Fenner, upon the first motion; for Gawdy said, If one be indebted to me, and another comes to me, and promi-
seth that he will pay it; this is void, and nothing to purpose: But if he promise, in Consideration I will forbear my debt, that he will pay it such a day, if the debtor do not pay it, this is good; where-
fore, &c. But it was moved again at another day: And Popham and Clench held it to be well enough; for there is a mutual promise the one to the other, so that if the Plaintiff doth not pay it, Rogers the Defendant may have this Action against him: And so also the Defendant shall be charged as to him; and a promise against a promise is a good Consideration: But it was moved that the Declaration is not, that the Plaintiff promised to any, to the De-
fendant.

pendant, or any other, and therefore it is not good: But that was not well apprehended (as it seems by the Court) But Judgement was given for the Plaintiff, Croo. 1. part last published. 703.

Pleading.

Riggs and Bullingham. M. 41 Eliz. B. R. Assumpsit, Whereas he was seized in Fee of the Advowson of Beckingham, in the County of Lincoln. In Consideration that he, at the Defendants request, by his Deed dedisset & concessisset, to the Defendant the first, and next avoidance of the said Church, the Defendant the 22 of August, 37 Eliz. assumed to pay to the Plaintiff a Hundred pound, &c. Non-Assumpsit, found for the Plaintiff; moved in arrest of Judgement, that the Consideration was past, and no time set when the Grant was, and therefore the Assumpsit cannot be good. Dyer. 272. But the Court resolved the contrary: For the Grant being made at his request, it is a sufficient Consideration, although it were divers years before, especially being to the Defendant himself: But if the Grant had been to a stranger, and not at the Defendants request, it had been peradventure otherwise; wherefore it was adjudged for the Plaintiff, Croo. 1. last published. 714. See 59. before case 1. 4, 17, 13, 77. After 84, 85.

Case 84.

For the grant of the next avoidance

Promise to pay mony.

Consideration past good

Harpool and Miller. M. 41 Eliz. in Camera Sacarii. In an Assumpsit, the Plaintiff declared, that whereas there was a Suit in the Star-Chamber, between one Coldwell, and the said Miller, the Plaintiff, wherein Harpool was Solicitor for him; that Harpool the Defendant, in Consideration of a quart of Wine, assumed to save him harmless from all costs and charges, which should be awarded against him in the said Suit: And alleges

Case 85.

Consideration to save harmless from a Suit for a pint of Wine.

Conside-
ration un-
lawful.

in fact, that the said Cause was afterwards dis-
missed: And that Eight pound costs were then ad-
judged against Miller the Plaintiff; and that there-
upon a Subpœna was awarded to pay these costs
which he had paid, &c. It was moved, that this is
a void Consideration, for it is a maintenance; and
of this opinion was Walmsley, and some other of
the Justices; But Anderfon and Periam held, that
it is not maintenance, for he doth not assume to ex-
pend the costs in Suit, but to save him harmless
from those which shall be awarded, after they be a-
warded, which may be lawful; wherefore, &c. the
Cause was afterwards compounded, Croo. 1. last
publisht. 73 1. See cases 83, 85.

Case 86.

Conside-
ration
that he
had paid
a debt.
Promise
to repay
it upon
request.

Conside-
ration past
good.

Barker and Hallifax. H. 42 Eliz. Com. B. Assump-
sit, whereas the Defendant such a day and year, in
Consideration that the Plaintiff, by the Defendants
appointment, and for his debt, paulo ante tunc sol-
visset to R. S. Threescore pound, that the Defen-
dant assumed to pay it upon request, &c. The De-
fendant pleaded Non-Assumpsit, found against him;
motion to arrest Judgement: The same was stay-
ed, because the payment of the Threescore pound,
being a Consideration past, was not sufficient to
maintain the Action: But Walmsley said, that an
Assumpsit, in Consideration that you had married
my Daughter, to give unto you Forty pound, was
good, for the affection and Consideration alwayes
continues, Croo. 1. last publisht. 741.

Case 87.

Promise
to pay for
Cows
bought
and if he
fail at the
day to pay
more.

Glascok and Duffield. Hill. 42 Eliz. Camera
Scaccarii. Assumpsit, in Consideration he would sell
to the Defendant three Cows for Ten pound, that
the Defendant promised to pay the Ten pound at
the Feast of Easter following, and if he failed, that
he would pay unto him a Hundred pound, cum re-
quisitis

quisitus elset; and alledged in fact, that he sold the Cow to him accordingly: And that the Ten pound was not paid at the Feast, whereupon he brought this Action for the Hundred pound, where in he recovered: And in a Writ of Error it was held to be a sufficient Consideration for the Hundred pound; and the Judgement was affirmed, Croo. 1. last publisht. 747.

Bret and I. S. and his Wife. P. 42 Eliz. Co. B. Case 88.

Assumpsit, the Case was, That William Dracot, first Husband to the Feme, sent his Son to Table with the Plaintiff for Three years, and agreed to give to him for every year Eight pound, and dyed within the year: The Feme during her Widowhood, in Consideration of her natural affection to the Son, and in Consideration that the Son should continue during the residue of the time with the Plaintiff, promised to the Plaintiff to pay to him Six pound thirteen shillings four pence, for the Tabling of the Son for the time past, and Eight pound for every year after that he should continue there with the Plaintiff; afterwards she married the Defendant; and the Plaintiff brought his Action as well for the Six pound thirteen shillings four pence, as for the Tabling for the two years following: And it was resolved by the whole Court, that the Action would well lie. And

Promise to pay for tabling past and present.

Apportionment of a Contract.

1. That the first Contract might well be apportioned, it being for Tabling, there ought to be a Recompence, although he depart, or the Contract dye within the year.

2. That natural affection of it self is not sufficient Consideration to ground an Assumpsit, without an expresse quid pro quo, which is in this Case, that her Son should after continue his Tabling, which

Consideration good.

which is good, as well for the Money due before, as for what should afterwards become due.

Debt.

3. That if the Contract had been onely for the Tabling afterwards, then debt would have layen, and not this Action; but being joyned with another thing, for which he could not have an Action of debt (as it is here for the Six pound thirtē shillings four pence) an Action of the Case lyeth for all (as Debt with other things may be put in Arbitrement) It was adjudged for the Plaintiff, Croo. 1. last publisht. 755, 756. See cases 95, 146.

Arbitrement.

Case 88.

Promise upon forbearance to pay a debt.

Consideration valuable.

Tisdales case. Pasche, 42 Eliz. Co. B. Assumpsit. The Case was, That Tisdale, Administrator, had a Judgement against him for the debt of the Intestates, and promised to the recoverer thereof, in Consideration that he would forbear to sue Execution against him till Octab. Mich. that he would pay unto him the sum recovered at Michaelmas, and at Michaelmas he failed of payment, and after, and before Octab. Mich. he brought an Assumpsit; and this being shewen unto the Court, it was moved first, that this Consideration is not sufficient to maintain the Action; for the forbearance between Michaelmas, and Octab. Mich. is void. But all the Court held it to be well enough; for if part of the Consideration be good, it sufficeth, and he ought to alledge performance of that part of the Consideration, which is material and valuable: But where a Consideration consists of two or three parts, and every one of them is valuable, there of necessity he ought to shew performance of every part thereof: They also held, that the Consideration to forbear to sue Execution for a time certain, was good cause to ground that Action: But it hath been adjudged, that a Consideration to forbear paululum temporis, is

is void; for it is not certain; and paululum tempus is not temporis pars. And the Suit after Michaelmas, before Octab. was well, because the Assumpsit was not performed by the non-payment at Michaelmas; but of that was the greatest doubt, Croo. 1. last publisht. 758, 759.

Forbearance
Paululum
temporis.

Symcock and Pain, M. 42 Eliz. Co. B. Assumpsit, Case 90. For that the Defendant, in Consideration that the Plaintiff had let unto him such Land for a year, promised unto him ad tunc & ibidem, to pay pro firma terre predictæ, at the years end Twenty pound; upon Non-Assumpsit, found for the Plaintiff; it was moved against the Judgement, that this Action lay not, it being not for Rent, but Debt: But all the Court (Popham absente) held, That the Action was maintainable, for it is not a Rent, but a sum in grosse, for which, he making a promise to pay it, in Consideration of the Lease, the Action lies: And it was adjudged for the Plaintiff: But afterwards, because it was but a meer debt, for which an Action of Debt lies, and it is but a meer Contract, it was reversed, Croo. 1. last publisht. 786.

Promise
to pay for
a Lease of
Land.

Action for
a Rent.

Hutton and Webb. M. 22 Jac. The Declaration was, in Consideration that the Plaintiff such a day, at the Request of the Defendant, promised to sell, and deliver to the Defendant Twenty Tods of Wool, at the rate of two and twenty Shillings the Tod, to the use of the Defendant, the Defendant then and there assumed to pay to the Plaintiff Three Shillings eight pence; this was agreed to be a good Contract, consisting of mutual promises, Bendl. 150. See in this Section, cases 1, 77, 82.

Mutual
promises,
good con-
sideration

Olivers Case. M. 22 Jac. Assumpsit, The Case was, The Father being Coppyholder in the Fee,
sur=

228 92

Promise
that if a
man do
not re-
deem his
Land, that
he will
pay him
more for
it.

Confide-
ration

Case 93.

Promise
of money
to marry
hisdaugh-
ter.

Notice,
Request.

Case 94.

Promise
to pay,
quantum
valeret.

surrendered to the use of his Son in Fee, on condi-
tion to have it again upon payment of fourscore
pound: And after it was agreed between them, and
the Son promised, that if the Father should fail in
payment at the day, that then the Son would pay to
him Threescore pound; it was moved, that the
Consideration is not good: But Ley Chief Justice,
and Dodridge held it good enough; and it was after
adjudged for the Plaintiff, Bendl. 151.

Alfred and Blackamore. H. 1. Car. 1. Assumpsit,

Declared, that the Defendant promised to him
Threescore pound, if he would marry his Daugh-
ter, upon the day of Marriage, or within Ten days
after, upon request, and saith he married her, and
that he had not paid, albeit he had been required, &c.
It was moved in Arrest, because Notice was not
alleged: But by Jones and Whitlock judged to
be good, and that the Request did imply it, and so
are the Presidents Order given to enter Judgment,
Bendl. 159.

Delavall and Cleere. M. 2 Car. 1. Action upon
the Case, declare, That the Defendant brought
Eight yards of Satten, and entreated him to make
a Suit of it, and to lay out for necessities, and pro-
mised to pay him for the making, so much as it
should be worth; and shews, that he disburs'd for
Tassety, Lace, &c. Six pound, and that he deserves
for the making Thirteen shillings four pence, De-
fendant pleads he was within age at the time, ab-
sque hoc, &c. Plaintiff demur. And Judgment was
given for him, for the Plea is repugnant; and it
must be shewed on the Infants part, that the Appa-
rel was such as was not necessary for one of his
condition, Bendloes 186.

Case 95. Hammon and Roll. P. 18 Car. 1. Co. B. Assump-
sit,

fit, the case upon a Special Verdict A. and B. were bound jointly and severally in a Bond to C. who released to A. Afterwards B. in Consideration that C. would forbear him the payment of the money due upon the said Bond, till such a day, promised to pay it; &c. this promise was adjudged to be void; for the debt is gone by the Release of one of the Obligees; March. Rep. 203.

Curtice and Columbine. Pasche. 23 Car. 1. Banc. Reg. Mich. 22 Car. 1. Stiles 19, 20 Curtice brings an Action upon the Case against Columbine upon an Assumpsit by parcel, to find meat, drink, lodging, &c. for the Plaintiff, and to teach him the Rate of a Mercer: This Agreement was afterwards by consent of both parties put in writing; upon the Trial the Plaintiff obtains a Verdict upon the parcel Agreement, and hath Judgement; thereupon the Defendant brings his Writ of Error in this Court, and Assigns for Error, that there was no Assumpsit declared upon, or proved sufficient, to warrant the Verdict and Judgement; because that by reducing the Agreement to writing, the Parcel Agreement became ipso facto void, and so no Action could be brought upon it; but it ought to have been brought upon the Agreement expressed in the Writ, and the issue ought to have been joyned upon that; and not upon the Verbal Agreement, which is void, the Rule of Court was to shew cause why Judgement should not be reversed, See before case 87.

Bruer and Sowthwell. Trin. 23 Car. 1. B. R. Bruer brought an Action upon the Case upon an Assumpsit to pay so much money for Currance sold unto him discomputando for Four months: The Defendant Demurs to the Declaration for the uncertainty of it, because it is discomputando, for

14 b

Four

Case 96

Case 97

Four moneths, and exprested not for how much he should discount, and so there can be no certain damages given, and upon this it was stayed till the other party move, *Stiles* 27. 58, 63.

Case 98. *Permitter and Gresly. Mich. 23 Car. 1. Banc. Reg.* *Permitter* brings an Action upon the Case upon an Assumpsit, and declares, that the Defendant, in Consideration that the Plaintiff had sold and delivered unto him such a number of peices of Stuffs, the Defendant did assume and promise to the Plaintiff, to deliver unto him the value of the Stuffs in such Pipes of Wine, lying in Bradgates Cellar in London, as the Plaintiff should make choice of, and for not performing the same, brings this Action; The Plaintiff obtains a Verdict, The Defendant moves in arrest of Judgment, and shews these Causes,

Promise
that for
Stuff he
had deli-
vered, he
should
have
Wine.

Election.

1. That the Plaintiff doth not aver in his Declaration, that he made any Election of the Pipes of Wine; and before such Election the Defendant was not bound to deliver them; nay, it was impossible for him to perform the agreement before the Election.

Special
Request
to be
made.

2. The Plaintiff doth not set forth that he made the Election, where the Wine was, which he ought to have done, because of the insupportableness of the Commodity to be brought to him to make his choice. The Court held, that here ought to be a special Request made to deliver the Wine, because it is upon a Contract, and an Action of Debt lies not for them, and thereupon arrested the Judgment, till the Plaintiff should move, the same Term Judgment was given against the Plaintiff. *Quod null capiat per Billam. Sciles* 49, 74. In the first place it is said to be adjudged for the Defendant;

rant, and in the last it is said to be adjudged for the Plaintiff. *Quare.*

Tanner and Lawrence. Mich. 23 Car. 1. Banc. Case 99.

Reg. Tanner brings an Action upon the Case against Lawrence, upon an Indebitatus Assumpsit, to pay unto him Two Shillings a peice, for every Cloth he should buy for the Defendant, and declares for so much money due unto him, and hath a Verdict: The Defendant moves in arrest of Judgement, and shews for cause.

Indebitatus Assumpsit.
Declarati-
on.

1. That it is not averred by the Plaintiff, that he gave any notice to the Defendant, how many Cloths he had bought for him, and so it is not certain what is due to him: To this it was answered, that the Cloths were bought for the Defendant himself; and he may very well take notice of the number of them, without any notice given him.

Request
implies a
Notice.

2. That here is a Request set forth for the payment of the Money, and this implies a notice: But Roll, Justice, to this answer replied, that the request doth not imply a notice, and so is Twiss Case, and besides, the notice ought not to be by implication, but must be averred certainly, yet let it be moved again, *Stiles* 53.

.101.30

Burnet and Bird. Mich. 23 Car. 1. Banc. Reg. Burnet the Administrator of I. S. brings an Action upon the Case against Bird, and declares against him upon an Assumpsit made by the Defendant unto the Intestate, for the payment of a certain sum of Money, for a Marriage Portion at two Liberal dayes of payment, equally, and that for not performing the same in the life time of the Intestate, he brings this Action. The Plaintiff hath a Verdict: the Defendant moves in arrest of Judgement, and shews for cause, that the Plaintiff doth not well.

Admorsq. A.
Ca. 100.

Pleading
of Letters
of Admi-
nistratiq.

set forth the granting of the Letters of Administration to him, for he says they were granted to him by the Arch-Deacon of such a place, and doth not say, *loci illius ordinarius*, nor *cui administratio pertinuit*.

Request.

2. It is said, that the Money was to be paid at two several payments, which amounts to two several promises, viz. a promise to pay the first Ten pound on such a day, and a promise to pay the other sum at another day to come, and doth not alledge any particular request made by the Incitor for the first Ten pound: But Bacon, Justice, over-ruled both the Exceptions, and said to the first, that the Law doth take notice of an Arch-Deacon, being a publick Ordinary, and therefore it is not needful to express, that the Letters were granted per Archidiaconum of such a place, *Ordinarius illius loci*, or *cui administratio pertinuit*, but otherwise, if granted within a peculiar Jurisdiction, therefore he ordered to shew better matter, or Judgement should be given for the Plaintiff, Stiles 54.

Ca. 101.

A promise to make one estate for another made

Consideration past.

Pasche. 24 Eliz. in the Kings Bench. Hughes. pl. 19. In an Action upon the Case, upon a promise, the Consideration was where I. S. had granted a Term to I. D. that afterwards upon the request of I. S. J. D. did make to W. an Estate for Four years, upon which W. brought his Action, and after Verdict it was moved in Stay of Judgement, that there was no good Consideration, and a difference taken, where the promise was upon the grant, and where afterwards: If it were before, then the condition was good, but if afterwards, it was not good; and it was adjudged, that the Plaintiff *nihil capiat per Billam*.

Ca. 102.

Beauchampe and Neggin. Trin. 34 Eliz. B. R.

Error

Errour of a Judgement in Assumpsit, the 1st Error Promise was, for that N. the Plaintiff in the Assumpsit, de- to repay clared, that whereas the said B. in Consideration a sum paid by that the said N. had paid for him, and at his Re- the Plain- quest to C. at such a day (which was a year before- tiff for the De- the promise). Ten pound, he assumed to repay it- fendant, cum inde requisitus esset, and this was said not good, Consid- because past. 2. Error was about the Vennce : But eration it was resolved, that when the payment is laid to be past. at his request, the Consideration doth continue, and so is the common course, Croo. 1. last publisht. 282. See Cases 82, 83, 139, 171.

Pyers and Turner. Trin. 34 Eliz. B.R. Assumpsit, Ca. 103. Pyers, as Administrator to Greenway, declares, that whereas one Walter Turner, the Son of the Defendant was bound by Obligation of Eighteen pound to the Intestate, which Money was not paid at the day, but the Son moved the Father to pay it for him, the Defendant, in Consideration the Intestate would give him a longer day, promised to pay it, and that the Intestate gave him a longer day, viz. the Sixth of May, &c. Upon Non-Assumpsit, found for the Plaintiff; motion to arrest, &c.

1. For that he shewed not the place where the Administration was committed; as 35 H. 6, 31. but this was not admitted, for it is good in a Declaration, but not in a Bar.

No Consideration. Pleading of an Administration.

2. For that here is no Consideration, for the giving of day to the Father; who was not indebted, but this was not material, otherwise if it had been to the Son, sed non allocatur, for by Gawdy, laying all the matter together, that the Father required it upon the request of the Son, and the other giving day, it is good: And a Recovery in this

Recovery
in one, a
Bar to a-
nother
Action.

Action shall be a good Bar in debt upon the Bond against the Son; and to this the Court agreed, and the Plaintiff had Judgement. Nota. Trin. 37 Eliz. In the Exchequer Chamber this Judgement was reversed, for it was no Consideration. Croo. 1. last publisht. 283.

Ca. 104.

Promise
upon Stay
of a Suit
to seal a
Bond.

Okes and Kirby. Pasche. 35 Eliz. Co. B. Assumpsit. In Consideration the Plaintiff, at the Defendants request, would surcease such a Suit, &c. the Defendant promised to seal him a Bond when required, &c. and alledged in fact, that he did surcease the Suit, and the Defendant licet scriptis requisit such a day and place had not sealed it; After Verdict it was alledged in Arrest of Judgement.

1. It is not said, he surceased at the request of the Defendant.

2. That the request to seal the Bond was not by the Plaintiff; But they were not allowed for good Exceptions, but it was adjudged for the Plaintiff, Croo. 1. last publisht. 299.

Ca. 105.

Pleading
of a Con-
sideration

Pipes Case. M. 36, 37 Eliz. Com B. Assumpsit. That whereas the Defendant was arrested for Surety of the Peace in Consideration the Plaintiff would be Bail for him, he did assume, &c. and alledged in fact, that he became Bail for him, but saith not before whom; And this moved in Arrest, &c. it was held good cause, for the Consideration ought to be precisely alledged to be performed, and therefore he ought to say, before whom he had entered into Bail; that it might appear he had authority to take the Bail. Croo. 1. last publisht. 352.

Ca. 106

Promise
upon day
given to
pay the
money.

Pasche. 24 Eliz. in the K. B. An Action upon the Case upon a promise, was, the Consideration was, That in Consideration that the Plaintiff direct di-

cm

em solutionis, the Defendant superse assumpsit, and because he doth not say in fact, that he has given day, it was adjudged that no good Consideration was alledged; but if the Consideration were, quod cum indebitatus, &c. the same had been a good Consideration, without any more, so, that implies a Consideration in it self, Godb. Rep. 20. page 13. See Cases 106, 111, 141, 259, 336, 341.

Fullers Case. Mich. 28, 29 Eliz. In the Common Pleas, A. promisseth unto the eldest Son, that if he will give his consent, that his Father shall make an assurance unto him of his Lands, that he will give unto him Ten pounds, if he give his assent, although no assurance be made, yet he shall maintain an Action upon the promise: But at another day Periam, Justice, said, that in that Case the Son ought to promise to give his assent, or otherwise A. had nothing, if his Son would not give his consent, and so where each hath remedy against the other, it is a good Consideration; after in Hillary Term.

Fenner spake, in arrest of Judgement, upon the special Verdict, that because the Assumpsit is but of one part, and the other is at liberty, whether he will give his consent or not; that therefore, although that he do consent, that he shall not recover the Ten pounds; also he said, that the promise was, that if he would give consent, that his Father should make assurance to him; and here the Assurance is made to A. to the use of the Defendant, and his Wife in Tail. Shuttleworth contrary, in as much as he hath performed it by the giving of consent, than when he hath performed: it is not to the purpose, that he was not tied by a cross Assumpsit to do it, but if he had not given his consent, he should have nothing; at least Judgement was

given for the Plaintiff. And Periam, Justice, said, in this Case, that if a Covenant be to make an Estate to A. and it is made to B. to the use of A. that he doubted whether that were good or not, Godb. Rep. pl. 106. page 94.

Ca. 109.

Promise
to deliver
Wood
sold at D.

Mich. 28, 29 Eliz. In the Common Pleas. A. bargains with B. for Twenty Loads of Wood, and B. promises to deliver them at D. if he fail, an Action upon the Case lyeth: But Periam, Justice, said, That upon a simple Contract for Wood, upon an implicative promise, an Action upon the Case doth not lie, Rodes, Justice, if by failure of performance the Plaintiff be damaged, to such a sum; this Action lieth, Godb. Rep. page 98. pl. 112.

Ca. 110.

Promise
to pay
money
for Beer
past, and
to come.

Hatch and Capels Case. Mich. 11 Jacobi, in Common Pleas; In an Action upon the Case, upon an Assumpsit brought against the Defendant, the Plaintiff declared, how that one Hallingworth, who was the Defendants Husband, was indebted to the Plaintiff Eight pound ten shillings for Beer, and that he dyed, and that after his death the Plaintiff demanded the said Money of the Defendant his Wife, and she, in Consideration that he would serve her with Beer, promised that she would pay unto the said Plaintiff Eight pound ten shillings; and for the rest of the Beer at such a day certain, and the Plaintiff did aver that he did sell and deliver to her Beer, and gave her day for the payment of the other money, as also for the Beer delivered unto her, and that at the day she did not pay the Money. Crook, and all the other Justices agreed, that the Action would well lie, and that it was a good Assumpsit, and a good Consideration; for they said, that the forbearance of the Money is a good Consideration of it self; and they said, that in every Assumpsit, he who makes the

Forbearance of a
debt, a
good consideration

the promise, ought to have benefit thereby, and the other is to sustain some loss; and Judgement was given for the Plaintiff, Godb. page 202. pl. 290.

Blichman and Martins Case. Pasche. 12 Jac. Blichman in the Kings-Bench, brought an Action upon the Case against Martin, upon an Assumpfit; and recovered, and it was moved, that because the Consideration which was the cause of the Action, was against Law, that the Judgement might be stayed, for the Plaintiff did alledge the same to be in Consideration, that if the Plaintiff, being Gaoler of such a Prison in Devonshire, would deliver one who was in Execution for Debt, he promised to give him Twenty pound, and he alledged in fact, that he did deliver him, the debt not being satisfied; And because the Consideration was to do a thing which was against the Law, the opinion of the Court was, that it was void, and that the Plaintiff should not have Judgement, Godb. pl. 346. page 205 See cases 18, 61, 62.

Ca. 111.

To deliver a prisoner.

Consideration against Law.

Killigrew and Harpers Case. Trin. 21 Jacobi, in the Kings-Bench, Harper in Consideration of a Hundred pound, doth assume, and promise to Killigrew, that the Lady Weston and her Son, shall sell to Killigrew such Lands, proviso, that Killigrew such a day certain pay to the said Lady, and her Son, Two thousand pound, at which time the Lady and her Son shall be ready to assure, and convey to Killigrew the said Lands; and for want of the payment of the said Two thousand pound at the said day: That Killigrew shall lose the said Hundred pound, and that the Contract for the Land shall be void; Killigrew brought an Action upon the Case for Assumpfit against Harper, and all this matter was found by special Verdict. The opinion of the whole

Ca. 112.

Promise for some money paid, and more to be paid to J. S. that he shall assure Land.

Conside-
ration not
pursued.

whole Court was against the Plaintiff, that the Action would not lie, and so Judgement was given, Quod nihil capiat per Billiam. Godb. pl. 432. page 337.

Ca. 113.

Promise
to a Chi-
rurgion
to pay for
a cure.

Paine and Colledges Case. Trin. 21 Jac. Kings Bench. An Agreement was made between Paine and Colledge, that if Pain (being Chirurgeon) did cure Colledge of a great disease, viz. a noline tanger, that then he should have Ten pounds, and that if he did not cure him, that then for his own pains and endeavours, Colledge would give him Five pound. In an Action upon the Case brought by Paine, he doth not shew in his Declaration, in what place he used his endeavour and industry, and therefore Judgement was given, that Quereas nihil capiat per Billum. Goldb. pl. 490. page 112.

Pleading.

Ca 114.

Promise
upon for-
bearance
of a Suit,
to pay
money.

Finner and Jeffry. Mich. 23 Car. 1. Banco Regis. Finner brings an Action upon the Case against Jeffry, and declares, that the Defendant did assume, and promise unto him, that if he would forbear to sue one who had assaulted him, and beaten him, that he, the Defendant, would pay the Plaintiff as much Money as he was damaged by the Assault and Battery, the Plaintiff hath a Verdict; the Defendant moved in arrest of Judgement, and shewed for Cause,

Conside-
ration not
valuable.

1. That it doth not appear by the Declaration, that the Plaintiff had any intention to sue the party for the Assault and Battery, and so the Assumpsit, in Consideration that he would forbear to sue for it, is no Consideration.

Pleading.

2. He doth not set forth, that he gave any notice to the Defendant what damages he had sustained by the Battery: But the Court held, that the Plaintiff needed not to alledge, that he had an intent to sue the

the

the party, so that the Defendant took notice of it when the Assumpsit was made, and so the notice what damages the Plaintiff had sustained, the request to perform the Assumpsit implies that sufficiently, and so gave Judgement for the Plaintiff. Stiles Rep. page 57.

Freeborne against Purchase, Trin. 24. Car. 1. Banc. Reg. Hill. 23 Car. 1. Rot. 1575. Freeborne brought an Action upon the Case against Purchase, and declares, that the Defendant, in Consideration that the Plaintiff had paid unto him such a sum of Money, did assume, and promise to joyn in the Surrender of certain Coppy-hold Lands, and that for not performing this promise, he brings Execution: The Defendant demurs upon the Declaration, and shews, that the Plaintiff doth not alledge, that he made any request to the Defendant to joyn in the Surrender, which he ought to do, for it was not a single act to be done by the Defendant alone, but he was to joyn in the act with another. Rolls, Justices, said, the promise is, that the Defendant shall joyn in the Surrender, and he doth not say, that he did request him to joyn, which he should have done; and besides, the breach is not well assigned, for you have assigned a particular way how he should Surrender, namely, unto the hands of Two Tenants of the Mannor, whereas he did assume only to joyn in a Surrender, which may be in Court, or in the hands of the Lord, as well as in the hands of Two Tenants: So is Sims and Walkers Case. 3 Car. 1. also the Plaintiff ought to have shewed, that there is such a particular Custom in the Mannor, that a Coppy-hold Tenant may Surrender into the hands of Two Tenants of the Mannor, or else such a Custom cannot be taken notice of, therefore let a

Ca. 115.

Promise to joyn in a Surrender of Land.

Request.

Pleading.

Not a breach.

Nil

Nil capiat per Billam be entred against the Plaintiff, Stiles Rep. page 107

Ca. 116.

Consideration of Marriage.]

Promise to leave his Trade.

Promise of many parts, some unlawful.

Consideration against Law.

Bragnell against Goff. 24 Car. 1. Banco Regis. Goff brings an Action upon an Assumpsit against Bragnell, and hath a Verdict and a Judgement against him, the Defendant brings a Writ of Error to reverse this Judgement: The Case was this, Bragnell did assume, and promise unto Goff, that in Consideration that Goff would marry the Daughter of Bragnell, that he would be bound to give over his Shop to him, and not use his Trade in Basingstock, and would bind unto him Fifty pound, and for not performing this promise he had his Judgement: The Error assigned was, that there is a breach laid of all the promise, which consists of divers parts, and one part of it is against Law; namely, the promise to be bound not to use his Trade, and yet damages are given entirely for all, which is not good. Wild an Counsel on the other side, that in 2 H. 8, 5. urged, is no Judgement given, and in our case it is not that he shall be bound not to use his Trade generally, but onely in the Town of Basingstock, and he may use it any where else, and therefore it is not against Law. Roll, Justice, if the words be general, that he shall not use his Trade in such a place, without any consideration, this is all: But otherwise, if there be a Consideration, for a man may sell his Liberty and Privilege for a Consideration, and it shall bind him: The Rule was, so shew cause Saturday next why Judgement should not be affirmed; this was afterwards moved and objected, that part of the Assumpsit was to turn over the Defendants Trade and damages given for that which is impossible? Roll, Justice, said, if damages entire be given for

some

some things, with others; whereof some are impossible, the damages shall be deemed to be given for the rest, and not for those that are impossible, and void, the Judgement was affirmed, See Case 206.

Ayre against Sibs. Mich. 24 Car. 1. Banco Regis. Ayre brought an Action against Sibs upon the Case, upon a promise to pay certain Arrearages of Rent appearing due unto him upon an Account made between him and the Defendant: The Plaintiff had a verdict; the Defendant moves in Arrest of Judgement, and for cause shews, that an Action upon the Case doth not lie upon a promise to pay a Rent appearing due upon Account, for the Rent was due by a Real Contract, and upon that the Plaintiff had remedy without the promise. To this the Court said, that this Action doth not lie for a Rent alone due, upon a Real Contract, but for the Rent, with other things it doth lie, yet let the Judgement be stayed, for there is here no new Consideration to ground this promise upon, but onely the old Consideration of Law, for the payment of the Rent, and upon that an Action of the Case doth not lie, for it is in the reallty, Stiles Rep. page 131.

Tracy against Poole. Mich. 24 Car. 1. Banco Regis. Tracy brought an Action upon the Case against Poole, upon a promise, and declares, that Poole, the Defendant, in Consideration of a Marriage to be had between the Plaintiffs Son, and the Defendants Daughter, and of settling so much Land upon him upon the Marriage; he did assume and promise, that within such a time, after the Marriage had, he and his Son should be bound per scriptum sum debita juris forma fiend. unto the Plaintiff, for the payment of Three thousand pound for

Case 117

Case 118

Pleading.

a Marriage-portion, and assigns the breach, that the Defendant and his Son did not become bound per scriptum suum debita juris forma fiend. and the breach is, that they did not give security per scriptum suum Obligatorum, which agrees not with the Assumpsit, for the Defendant might give security by a Judgement, which is not scriptum suum, yet it is debita forma juris factum; upon this the Judgement was for that time stayed, though then Bacon, Justice, inclined, that the breach was well assigned, because in common construction it shall be intended, that the Defendant assumed to give his own, and his Sons Bond for security. The Court bid the Plaintiff take his Judgement, unless better matter were shewed on Monday following, Sciles Rep. page 143.

Ca. 119.

Conside-
ration to
let a
Booth in
a Fair.

Promise
to pay
money
for it, and
for the
Wine and
Hopps
spent du-
ring the
Fair.

Pleading.

Harris against Gibbons. Mich. 1649. Banco Regis. Gibbons brought an Action upon the Case against Harris, upon an Assumpsit, and declared, that the Defendant, in Consideration that the Plaintiff should let unto the Defendant a Booth in Sturbridge Fair, did assume, and promise to pay the Plaintiff Ten pound for the same, and to pay the Plaintiff for all such Wine and Hopps as should be spent in the Booth during the Fair: The Plaintiff had a Verdict and a Judgement: The Defendant brought a Writ of Error to reverse this Judgement, and assigned this Error, that it did not appear in the Declaration, that the Fair was ended when the Action was brought, and consequently that there was no cause of Action: But Twelden, of Counsel with the Defendant in the Writ of Error, said, it shall be intended it was ended, for the standing there during the Fair, is the cause of Action. Roll. Chief Justice, took another exception; That the Declara-

tion

tion doth not exprels that the Plaintiff gave notice how much Uline and Hopps he laid in the Worth during the Fair, nor that he made any demand of the payment of any sum of money due, and so the Defendant could not know how much Money he should pay, and therefore the Declaration is not good, because it is too general, therefore advise whether you will maintain it or no, and because the Counsel desired not to be further heard in it, the Judgement was reversed, Stiles Rep. page 172.

Johns against Leviston. Mich. 1649. Banco Regis.

Johns brought an Action of debt against Leviston, upon an Assumpfit, that the Defendant would enter into a Judgement unto the Plaintiff, for so much monies as Sir John Hall did owe unto the Plaintiff, if the Plaintiff would take common Bail of him the Defendant, if Hall should dye before such a day, and for not performing this promise, the Action was brought; upon Non-Assumpfit pleaded, there was an Issue joined, and a verdict found for the Plaintiff: The Defendant moved in arrest of Judgement, and shewed that it doth not appear that there was any notice given by the Plaintiff to the Defendant, how much money was due to the Plaintiff from Sir John Hall, as there ought to be. Roll, Chief Justice, answered; you did not undertake to know, at the time of the Assumpfit, how much money he did owe, and notice is not necessary, and if it were, he might have gone to Sir John Hall, to tell him, and so it shall not onely be intended to be in the knowledge of the Defendant himself, but that he might have also knowledge of it by others; Jerman Justice, doubted, but Nicholas, and Ash, Judges, were of Rolls opinion, and the Plaintiff ordered to take his Judgement, if better matter were

Ca. 120.

Consideration to take common bail in an Action.

Promise to give a Judgement if the Defendant dye before such a day.

Notice

were not shewn, Stiles Rep. page 184.

Ca. 121.

Promise
to pay a
debt due,
upon re-
quest.

Special
request
to be
made.

Averment

Williamson against Mead. 1649. Banco Regis. Williamson brought an Action upon the Case against Mead, and declared upon three Assumpsits made by the Defendant to the Plaintiff, that the Defendants Son should pay such a sum of Money to the Plaintiff, for his boarding with him, when he should be thereunto required; upon Non-Assumpsit pleaded, and a Verdict for the Plaintiff, the Defendant moved in arrest of Judgement, That the Plaintiff doth not shew that he did require the Son to pay the Money which the Defendant did assume should be paid upon request; but onely saith, that the Defendant licet sepius requisitus non solvet: The Judgement was arrested till cause should be shewn to the contrary: The same day it was moved again, and the Counsel urged, that the request was not necessary to be made, and prayed for Judgement: But Roll, Chief Justice, answered, that this was a Collateral promise, and therefore the request must be averred to be made to the Son, therefore the Plaintiff can have no Judgement; and so nil capiat per Billam was ruled to be entered, Stiles 107, 108.

Ca. 122.

Promise
to pay so
much out
of the
freight of
a Ship.

Pleading
of an
Averment

Chase and Jones against Lovering. Trin. 1650. Banc. sup. Stiles 220. Chase and Jones brought an Action upon the Case against Lovering; upon a promise made by the Defendant to the Plaintiffs, to pay unto them Eighty four pounds, out of the freight of a Ship, and for not paying it, the Plaintiff brings his Action; upon Non-Assumpsit pleaded, there was an Issue joined, and a Verdict found for the Plaintiff: The Defendant moved in arrest of Judgement, and alledged cause, that the Plaintiffs Averment in the Declaration of the non-pay-
ment

ment of the Money, viz. Eighty four pounds, is not good, for it doth not appear by the Averment, that there was any freight due for the Ship; out of which the monies were to be paid. Roll, Chief Justice, answered, that the Plaintiff ought to have averred, that there was monies due for the freight of the Ship; otherwise how can it be known whether there be any monies due to be paid out of them, therefore the Averment is very uncertain, to whom German, Nicholas, and Ash, Justices, agreed. Roll, Chief Justice, added, that it is part of the promise, that the Money shall be paid out of the freight, and as the Averment is, the matter cannot stand together, and here is no demands for the Monies to be paid out of the freight: therefore against the Plaintiff; let there be a Nil capiat per Billam on record.

Maikerman against Rusholme. Hill. 1650. Banco Regis Stiles. 2. A Writ of Error was brought to reverse a Judgement given in an Action upon the Case upon an Assumpfit, to pay Mariners wages, the exceptions taken were, first, that the Plaint was for Ten pound, and the Declaration is to the damages of Twenty, and so variance between the Plaint, and the Declaration; next, the promise is laid to be made the first of May, 1641. to serve the Defendant for a year; and he laid, that he served him from the first of May, for a year; whereas the first of May ought to be excluded, so that he ought to say, that he served for a year from the making of the promise. Roll, Chief Justice, said, that there is variance between the Plaint, and the Declaration, but it is helped by the Verdict, for that finds that he hath served a whole year; but this other Exception ought to be taken, at the Bar.

Ca. 123.

Count
naught.

Variance,

end 2

31

1. That

1. That the Declaration was pro salario, instead of salario. And

2. It is said deserviter pro deservivit, and upon these the Court ordered the Defendant in the Writ of Error, to shew cause why the Judgement should not be reversed, Stiles Rep. 2.

Ca. 124. Newcoming against Leigh. Hill. 1650. Banco Regis. Leigh did assume, and promise unto Newcoming, that if Newcoming would take one Low for his debt, in the room of one Cooper, and would spare Low until such a time for the Money, that then he would pay the Money unto Newcoming, if he did not, and upon this Assumpsit: Newcoming brought his Action against Leigh, the question was, whether this was a good Assumpsit; and the Court held it was not, because it is a Collateral thing, and he doth not say, that he will discharge Cooper, and so Newcoming may sue Cooper notwithstanding the Assumpsit; for though it may be it was the intention of the parties to discharge Cooper, yet it appears not so by the words of the Assumpsit set forth; and it was thus said by Roll, that if I promise to pay to John a Down, a debt, which John a Stile oweth to John a Down; this is Nudum pactum, Stiles 249. See cases 4, 39, 63, 82, 84, 152.

Ca. 125. Coleman against Blunden. Hill. 1650. Banco Regis. Coleman brought an Action upon the Case upon an Assumpsit against Blunden, and had a Writ dist against him in Arrest of Judgement, it was moved, that it doth not appear by the Declaration, to whom the Assumpsit was made, but it onely says super se Assumpsit, and upon this exception the Court ruled a Nil capiat per Billam. Stiles 255.

Ca. 126. Sham and Sham. Pasche. 1651. Banco Regis. Sham

Sham brought an Action upon the Case upon an Assumpsit against Sham, and declares, that in Consideration that the Plaintiff would surrender to the Defendant, and his Heirs, a Coppy-hold, according to the Custome of the Mannor; the Defendant did assume, and promise to the Plaintiff, to pay unto him Five hundred pound, and for breach of this promise he brought his Action; and obtaining a Verdict against the Defendant: The Defendant moved in Arrest of Judgement, and took this exception, viz. that the Consideration on the Plaintiffs part was not performed; for the Consideration was, that he should surrender the Coppy-hold to the Defendant, and his Heirs, and he hath set forth the surrender to be in the hands of a Coppy-hold Tenant of the Mannor, to the use of the Defendant, which is no surrender, untill it be presented in the next Court, and so it is incertain whether it shall take effect or no. Roll, Chief Justice, said, it is expressed to be secundum Consuetudinem Manerii, yet this is not sufficient, for it is not an effectual surrender, untill it be presented at the Court; therefore let Judgement stay till the Plaintiff move, Stiles 256. 257, 280.

Promise upon a surrender of Land to pay money.

Pleading.

Shau against Bilby. Trin. 1651. Banco sup. Shau brought an Action upon the Case upon a promise against Bilby, and declares, that in Consideration that the Plaintiff should surrender a Coppy-hold unto I. S. and his Heirs, according to the Custome of the Mannor, the Defendant did assume, and promise to pay unto him a Hundred pound, and that he did surrender the Coppy-hold unto the hands of a Customary Tenant of the Mannor, according to the Custome of the Mannor, to the use of I. S. and his Heirs, and that the Defendant had not paid the

Ca. 127.

Promise upon the surrender of Land to pay money.

Hundred pounds, according to his promise, and declares to his damage, &c. Upon Non-Assumpsit pleaded, and Issue thereupon joyned, a Verdict was found for the Plaintiff; it was moved in arrest of Judgement by Latch of Counsel with the Defendant, that the Declaration is not good, Stiles 280.

Ca. 128.

Indebitatus.

Bills delivered in satisfaction of a debt.

Pleading.

Dowse against Masters. Pasche. 1651. Banco Regis. Dowse brought an Action of Debt upon an Indebitatus Assumpsit, against Masters for five pound, in which the Defendant pleaded, that he did deliver Bills to the Plaintiff, to the value of six pound, in which the Plaintiff was indebted to him, which Bills the Plaintiff did accept in full satisfaction; the Plain. if replied protestando, that he was not indebted to the Defendant, that he did not receive Bills to the value of six pound in satisfaction; upon this a demurrer was joyned. Roll Chief Justice, said, the Plea of the Defendant is ill; for he doth not say, that he delivered the Bills in full satisfaction, but that the Plaintiff received them in full satisfaction, which is not good, for the Plaintiffs receiving of the Bills, must be as they were delivered, and not otherways, and that is not expressed, therefore let the Plaintiff take his Judgement, nisi, &c. Stiles 263.

Ca 129.

Promise to pay for a Horse in hand so much, and to give security for the rest.

Brow. and Gold. Austin versus Jarvis. Assumpsit. Trin. 13 Jac. rot. 2180. The Plaintiff declares, that such a day and year he bought of the Defendant a Horse for a piece of Gold of the value of Two and twenty shillings by him to the Defendant then in hand paid, and for Eleven pound to be paid to the Defendant at the day of death, or Buriall of the Plaintiff, which should first happen, for payment of which Eleven pound the Plaintiff should bring to the Defendant one sufficient

ent man to be bound, together with the Plaintiff to the Defendant, the Defendant in Consideration thereof assumes to deliver the said Horse to the Plaintiff, when he should be thereunto requested; and the Plaintiff avers, that such a day he brought the Defendant one sufficient man, viz. I. A. de B. Yeoman, to be bound together with the Plaintiff, to the said Defendant for the payment of the said Eleven pound, and shews, that he requested the Defendant to deliver the said Horse; yet the Defendant hath not delivered him, according to his promise. The Defendant pleads Non-Assumpsit, and a Verdict for the Plaintiff, and moved in arrest of Judgement, for he could not perform his promise, by reason of his Infancy, and therefore the promise void, and another exception, for that it was not alleged, in what sum the Plaintiff and his Surety offered to be bound, and Judgement was, that the Plaintiff Nihil capiat per breve. Brownl. and Goldsb. page 11.

Request.

Infant.

It was agreed, that an Assumpsit the same day is good, for there is no division of a day, Latch. Rep. 151.

Ca. 130.

Gore versus Colthorpe. Trin. 5 Jac. rotulo. Brownl. and Goldsb. page 13. The Declaration was, in Consideration that the Plaintiff would give credit to E. G. then servant to the Defendant, for anything the said E. should deal for, to the use of the Defendant, and the Defendant, promised that he would see the Plaintiff contented, that which the said E. should deal for with the Plaintiff, for the use of the Defendant any way, when the said Defendant thereof (after it should become due) should be requested, and a special Verdict, by which it was found, that the Defendant promised to see the Plaintiff

Ca. 131.

Consideration to credit his servant with Wares.

Promise to pay for

is contented, that which the above-named E. C. should deal for with the Plaintiff, for the use of the said Defendant any way, the Judgement of the Court was, that the Verdict did not maintain the Declaration, because for Collateral matters, which are not duties, a request is material, and are not like a duty as for debt, which is due, and no day of payment expressed, that shall be alledged to be when he shall be thereunto requested, generally. For if I sell my Horse for Ten pound, and no day of payment, that shall be alledged in the Court, Cum inde requisitus esset; and one case of Peters was cited which was grounded upon a promise made in this manner; Marry my Peere, and when I come from London, I will give you a Hundred pound, and the Action was brought in this manner, viz. in consideration that he would marry her, A. promised to pay the Plaintiff a Hundred pound after he returned from London, when he was thereunto requested, the Action was maintainable.

Demand
(special.)

Ca. 132.

Promise
to pay a
Rent due
before.

Green versus Harrington, Brownl. and Goldsb. page 14. Trin. 17 Jac. rotulo. 953. Assumpsit the Plaintiff declares, that the Defendant such a day was indebted to the Plaintiff in Ten pound, for Rent due to the Plaintiff for one year ended at Michaelmas then last past, for divers Lands in H. demised to the Defendant by the Plaintiff; the Defendant, in Consideration thereof, promised to pay the Plaintiff the said Ten pound, when he should be thereunto requested; The Defendant pleads Non-Assumpsit, and after Verdict given for the Plaintiff, it was moved in arrest of Judgement, that there was no Consideration to maintain the Action, because an Action of Debt lay upon the first Contract, being in the reality, for upon an implied

promise, no Action will lie, where it is in the realty, except there be a special promise made upon a Collateral cause, viz. If the Plaintiff had surrendered Suit for the said Ten pound, and the Defendant, in Consideration that he would forbear to sue, promises to pay, &c. and the like; for if a man be bound in a Bond to pay Money, and the day past, now an Action of the Case will not lie for that Money, except there be a Collateral promise, and so in like cases; and Judgement was given against the Plaintiff.

Implicite promise.

Summers and Dugs case. Pasche: 22 Jac. Co. B. Assumpsit, The Plaintiff declared, that the Defendant was Rector of the Rectory of D. and that he and all his predecessors had used to have all manner of Tithes, and that the Plaintiff occupied a Hundred Acres of Land in the Parish, and that the Defendant promised to the Plaintiff, in Consideration that he would plant his Land with Hopps, and so make the Tithes to be the better, that he would allow him towards every Acre he should so plant, Forty Shillings towards the charge in planting them; and shewed, that he had planted one Acre at the Request of the Defendant, and so, &c. It was moved, whether this be a good Consideration, because the Tithes are not bettered by the planting, but by the growing and increase of them, and it is not averred, that the Tithes were of better value than they were before; the Court doubted of it: But the Court said, that if the Plaintiff had shewed in his Declaration that he might have made more benefit of his Land by other ways, than by the planting of it with Hopps, the Tithes also being bettered, the case had been clear, Winch. 80.

Ca. 133.

Consideration to plant his ground with Hopps Promise to allow forty Shillings an Acre for it.

Totnam and Hopkins case. Trin. 21 Jac. B. R.

Promise
to deliver
Corn at
Seed-time

Pleading.

Assumpsit. The Plaintiff declared, that in Consideration of Twenty pound paid, the Defendant did promise primo Martii, to pay and deliver the Plaintiff Twenty Quarters of Barley the next Seed-time; Upon Non-Assumpsit, it was found for the Plaintiff: it was moved that the Plaintiff ought to have shewed in his Declaration, when the Seed-time was, which he hath not done: But it was resolved per Curiam, that he need not do, because the Action is brought half a year after the promise, for not payment and delivery of the same at Seed-time, which was between the promise, and the Assumpsit, and here it appears the Action was brought at Michaelmas, by which it appears sufficiently, that the Seed-time was past. Adjudged for the Plaintiff, Godb. 350.

Ca. 135.

Promise,
in consideration
of Marriage,
to leave the
woman
worth a
Hundred
pound at
his death.

Action
discharg-
ed.

Smith and Staffords case. Hill. 15 Jac. C. B. Rot. 906. Assumpsit; brought by Husband and Wife against I. S. Executor of T. S. the Plaintiff declared, that there was a Communication had of a Marriage, between the Wife, the Plaintiff, and the said I. S. that the said T. S. in Consideration that the said Wife, the Plaintiff, would take him to her Husband, he promised, that if after the Marriage he the said T. S. dyed, leaving with the said Wife, that he would leave her worth a Hundred pound, and he avers that she did marry him, who dyed, and did not leave her worth a Hundred pound. Upon Non-assumpsit, it was found for the Plaintiff: it was moved, that by the intermarriage the Action was extinguished, and thereby the promise was released; and of that opinion was Robert, Justice; but which was Hutton held the contrary, for that the Law will not impute Release contrary to the intent of the parties, and that the Marriage will

not

not destroy that which it self creates, Hutten 17.
see cases 2. 29, 33, 95. See the like, case 230.

Hall and Woollens case, Trin. 18 Jac. Assumpsit.
The Plaintiff declared, that whereas the Defen-
dant was possessed of a House and Land, in M. in
the County of I. for One and twenty years, of Sir
John W. and whereas one I. D. was in speech of
buying the said Lease, and the Defendant could not
sell it without the consent of Sir John W. The
Defendant, in Consideration that the Plaintiff
would procure Licence of the said Sir John, pro-
mised to pay him so much as he should disburse, and
deserve therefor; and added, he did procure a Li-
cence, and disbursed such a sum, and deserved for
his labour such a sum. The Defendant demurred
upon the Declaration; the question was, if that
were a good Consideration, or no? for that it did not
appear that there was any restraint upon him from
making any assignment; but it was adjudged a
good Consideration, for it appears there was privity
between them, and it may be he had promised, that
he would not assign it, without his Licence; and it
was at his instance, and for his satisfaction; ad-
judged for the Plaintiff, Hutten 39.

Silvesters case, Trin. 17 Jac. B. R. Assumpsit. A.
promised B. that if he would marry his Daughter,
he would give with her a Childs part, and at the
time of his death, he would give her as much as to
any of his Children, excepting his eldest son, and
made his Executors, and upon B. brought an Action
against his Executors, and shewed, that the Ex-
ecutors had not given her a Childs part, and that such
a younger son of the Testator had a Hundred
pounds given him; it was adjudged, that the pro-
mise of a Childs part was uncertain, but being as
much

Ca. 136.
137.

Conside-
ration to
procure a
Licence
of the
Lord to
alien.

Promise
to pay
him for
his pains.

Conside-
ration
goods.

Ca. 138.

Promise
of a child's
part in
marriage.

Certainty

much as any of his Childzen had, and shewing that a younger Son had a Hundred pound; it was certain enough, adjudged for the Plaintiff, Popham. 148. See Arnold. and Dicksons case. 17 Jac. Popham 183. act. See case 241.

Ca. 139. Popham. 206. 2 Car. 1. in B. R. Assumpsit, that in case the Plaintiff would discharge B. of an Execution, the Defendant promised to pay him Ten pound, in an Assumpsit, the Plaintiff shewed, Quod exoneravit illam de executione, generally, and the discharge was by word, and not by writing; it was moved that the Consideration was laid to be too general, but it was resolved by the Court, that the Declaration was well enough, and he need not plead, the same was by writing, for the discharge by word was a sufficient discharge.

Boldens case. Mich. 1 Jac. B. R. in Assumpsit, the Defendant requested the Plaintiff to give his credit for one L. S. to I. D. for two Tuns of Wine, value Fifty pound, the Plaintiff gave Bond to I. D. of a Hundred pound for the payment thereof, upon which he was sued, and forced to pay Thirty pound, in Consideration of which the Defendant promised to pay the Fifty pound at such a day, and did not pay it, for which the Action was brought; it was moved, the Consideration was not sufficient, because it was upon a Consideration past: But because I. S. had credit given him by I. D. at the Defendants request, upon the Plaintiffs undertakings, the Court held the Consideration to be sufficient, and not past; adjudged for the Plaintiff, Croo. 2 part 18. See cases 170, 171.

Bidwell and Cottons Case. Hill. 15 Jac. not. 1765. Assumpsit, the Plaintiff declared, that he being an Attorney. Mich. 14. Jac. prosecuted an At-

tachs

tachment of privilege against the Testator, re-
turnable in Hilary Term, and the Testator know-
ing of it, in Consideration, that at his request the
Plaintiff would forbear to prosecute the said Writ
any further against the Testator, the Testator did
promise to pay him Fifty pound; after Verdict it
was moved, that the Action would not lie against
an Executor. 2. It is not averred, the Plaintiff had
good cause of Action; but it was adjudged for the
Plaintiff for Suits are most presumed to be cause-
less, and the promise argues, he desired to stay the
Suit; and though it did not discharge the Action,
yet it was a loss of the Writ, and a delay of the
Suit, which was both a benefit to the one, and a
loss to the other, Hobb. 300.

Promise
upon for-
bearance
of a Suit,
to give
more than
fees.

Executor.

Conside-
ration.

Grisleys Case. Hill. 11 Jac. rot. 1866. Assumpsit
was made to the Mother, in Consideration that she
would give her consent to the Marriage of her
Daughter with the Defendant, the Defendant pro-
mised to give her a Hundred pound; Upon Assump-
sit brought, it was found for the Plaintiff; it was
moved in arrest of Judgement, that this was no
Consideration, for there is nothing to be done on
the Plaintiffs part, either of travel, or charge, but
to give a naked consent, which is not necessary to a
Marriage, nor is she her Heir, or in her power as
Guardian by nature, or otherwise; But the Court
held it a good Consideration, for that the Mother,
by the Law of nature, and in the affection of the
Daughter, bore a special streak to incline the
Daughters mind one way or other in Marriage,
and the desire of her consent, and the working of
it shews it; and therefore it shall be presumed to
be of importance to have her consent, which being
had at the Plaintiffs request, shall be accounted a
good

Ca. 142.

Promise
of a Hun-
dred
pound, to
give con-
sent to a
marriage.

Conside-
ration
good.

good Consideration to ground an Assumpsit upon; adjudged for the Plaintiff, Hobb. page 15. pl. 20. Goldsb. and Brownl page 18.

- Ca. 143.** Johnson and Cullamors case. Trin. 14 Jac. in B. R. Assumpsit, the Defendant being to account with the Plaintiff, pro diversis debitis, insimul computaverunt; and found upon the account to be in arrears such a sum, and in consideratione inde, the same day the Defendant did promise to pay this at a certain day to come, at which time he failed to pay the same, and being found for the Plaintiff upon Non-Assumpsit, it was moved in stay of Judgement, that the Declaration was not good, because it was not shewed the promise to be made in Consideration of forbearance; but in consideratione inde: But the opinion of the whole Court was, that in consideratione inde, was a good Consideration, without shewing any forbearance, for here is a duty presently to be paid, or afterwards by promise to pay this, Bulstr. 3 part 208. See for this cases 178, 219, 253, 287, 330.
- Ca. 144.** Lea and Adams Case. Pasche. 13 Jac. in B. R. Assumpsit, in an Action upon the Case upon a promise for a Horse, the Plaintiff declared, that the Defendant made him a promise in this manner, viz. that if the Plaintiff would make him a Lease of One and twenty years, of certain Land for Ten pound yearly Rent, he in Consideration thereof, did promise to give him a Horse, and sets forth that he made a Lease to him of the Land, and he had not given him the Horse; it being found for the Plaintiff, it was moved in arrest of Judgement, that the Plaintiff had not entitled himself to the Action, having set forth generally, that he made him a Lease, making no mention of any Rent reserved;

Upon an
Insimul
computa-
verunt.

Confide-
ration.

Declarati-
on.
Pleading.

Confide-
ration, a
Lease to
be made.

Promise
of a Horse

reserved; it was the opinion of the whole Court, that by this Lease, thus made without any Rent reserved, he had not pursued the Contract, and so by consequence the Action was not maintainable for the House; it was adjudged against the Plaintiff, Bulstr. 3. part 35, 36.

Consideration not pursued.

Lingen. and Broughtons Case. Trin. 14 Jac. in B. R. Assumpsit, the Case was, that I. S. being indebted to the Plaintiff in such a sum, for which the Plaintiff purposed to sue him; for the preventing the Suit, the Defendant came to the Plaintiff, and desired him to forbear him for such a reasonable time, and if he did not then pay the Plaintiff, the Defendant promised to pay the same to the Plaintiff, and the Plaintiff sets forth, that upon this promise he did forbear to sue him, and that I. S. did not pay him; it was moved, that the Declaration was good, because it is not shewed therein how I. S. became first indebted to the Plaintiff, and also because it doth not shew certainly what time it should be that he ought to forbear him: the opinion of the whole Court was, that the Declaration was good, without shewing how Indebitatus suit, and also because the Court shall judge what shall be said to be a reasonable time, and it appeared to the Court, that the Plaintiff did forbear him for Eight years, which is a reasonable time; Judgement was given for the Plaintiff, Bulstr. 3. part 206. See cases 55, 70.

Ca. 145.

Forbearance of a Suit.

Promise to pay.

Declaration.

Pleading.

Forbearance for a reasonable time.

Hodges and Vavilors Case. Mich. 14 Jac. in B. R. Assumpsit, the Plaintiff delivered certain Cloths to the Defendant for so much, &c. sic Indebitatus suit, to him in so much, the Defendant, postea in consideration inde, did promise to pay this a year after, upon Non-Assumpsit, it was found for the Plaintiff;

Ca. 146.

Indebitatus suit.

Promise to pay it.

Conside-
ration
past

Plaintif; it was moved in stay of Judgement, that this promise should not bind him (it being said, postea in consideratione inde, he promised) which promise is grounded upon a Consideration past; but it was resolved per Curiam, that the promise here was grounded upon a Consideration, for that the debt there remained, and no discharge could be made of it, but by payment; Judgement was given for the Plaintiff, after motion to arrest it: And there it was said by the Court, that the Plaintiff may have his choice to sue upon the first, or upon this latter promise, but not upon both; and that this is not like to the Case of Seek and Pillsworth. M. 42, 43 Eliz. cited in this Case. One exchanged with another so much Silver for so much Gold; and he afterwards, in Consideration thereof, doth promise, &c. this is void: But in this there is a difference between a Contract, and an Assumpsit. See for this in Leonards Rep. 2. part 224, 225. And in this principal Case Justice Haughton did hold, that Indebitatus existens pro Merchandiciis venditis, is good; and that it was agreed by the Judges. Mich. 11. Car. 1. That if one in this Case lay a request, and the Case is so; the Action will lye: But if a man, of his own head, and of courtesie, will do a thing for me; that for this the Action will not lye, Bulstr. 3. part 222.

Ja. 147.

Promise
for Dyet
past and
to come,
to pay it.

Cotten and Wescots Case. Trin. 17 Jac. in B. R. Assumpsit, The Defendant was a Sutor, to a young Maid, who did sojourn in the Plaintiffs house; afterwards the Defendant did marry her, and did then desire the Plaintiff that his Wife might still continue with him, to sojourn for a year longer, to which the Plaintiff agreed: and afterwards, which was about the middle of the year, the Defendant

did

his promise, that in Consideration that he would suffer his Wife to continue there as a Sojourner for the whole year, that he would pay him for the whole year, as well for that which is past, as for that which was to come; it was objected, that Assumpsit did not lie, being grounded upon a Consideration which was past. See 10 Eliz. Dyer: 372. It was adjudged for the Plaintiff, Bulstr. 3. part 187. See Case 87.

Apprentice
ment.

Proviso
condition

Copper and Dickensons Case. Trin. 13 Jac. in B. Ca. 148. R. Assumpsit, Goods were pawned to a man by I. S. who said in the presence of the Defendant, that if I. S. would not pay him his Money, he would then sell the pawn to raise the Money; whereupon the Defendant said, Keep the Goods untill such a day by you, and if he do not then pay you, I will pay you the Money, and take the Goods; upon this the Plaintiff kept the Goods by him without sale, and the Defendant not paying the Money, the Plaintiff brought his Action: It was agreed per Curiam, that this was a good conditional Bargain, and sale of Goods, and that in this Case there was a good Consideration to raise a promise; Judgement for the Plaintiff, Bulstr. 3. part 70.

Promise
to pay
the debt,
if he will
keep a
pledge
delivered
for it, to
such a
time.

Bargain
and sale of
Goods.

Hill, 17 Car. 1. in B. R. Adjudged the Debtor accepted of the Debtor a Hundred pound, for his debt of Four hundred pound, the Defendant upon payment of the Money, had a general Release, and afterwards promised, in Consideration that he would make a general Release, he would pay him the Residue of the debt, when he should be able; the Debtor became able; and the Debtor sued him for the residue, upon that promise; the Debtor pleaded the Statute of 21 Jac. of Limitation of Actions, and that was to a Bill exhibited in equity for the res-

Ca. 149.

Promise
to pay a
debt dis-
charged,
when able

condition

due.

Assumpfit
discharg-
ed.

No Consi-
deration.

due of the Debt; it was moved for a prohibition to the Court of Equity, which was denyed, 1. Be-
cause there is no remedy but in equity, for the As-
sumpsit made befoze the Release, was discharged
by the Release: and the Assumpsit made after, void
for want of Consideration, the debt being released
befoze, and it is not within the Statute of Limita-
tion of Actions, because it is onely a trust reposed
in the Debtor, that he will pay the residue when he
is able.

Ca. 150.

Bill of
Exchange
between
Merchant

Pinchard and Fowks Case. Hill. 1654. Assumpsit,
the Plaintiff declared, that the Defendant, in Con-
sideration that the Plaintiff would forbear to protest
a Bill of Exchange drawn upon the Defendant, he
did promise he would pay the Monies, when he
should next come to London; it was moved upon
a Verdict for the Plaintiff, that there was no Con-
sideration to ground the promise upon; for he doth
not shew that he came to London, but sheweth that
he dyed at Plimouth: Per Curiam, the coming to
London is not material, for the payment of the
Money was a duty, and the Monies to be paid were
received beyond Sea; and so there is a duty, and a
good Consideration; Judgement for the Plaintiff,
Stiles 416.

Ca. 151.

Agree-
ment be-
tween
two, to
marry one
another.

Baker and Smiths Case. Trin. 1651. B. R. As-
sumpsit, the Plaintiff declared; whereas there was
a speech of a Marriage, betwixt her and the Defen-
dant, in Consideration that the Plaintiff would
marry the Defendant, the Defendant did promise
to her, that he would marry her, and afterwards
the Defendant, in Consideration that the Plaintiff
would discharge the Defendant of his promise, did
promise that he would pay to the Plaintiff a thou-
sand pound, and she sets forth, she did discharge the
De-

Defendant of his promise of Marriage. It was moved, that here are two promises, and it is incertain to which the Declaration doth relate. And 2. ^{mutual promises.} The promise is to dissolve a Contract of Marriage, which is a thing illegal, and so no Consideration: But per Curiam, here is a mutual promise made by both parties, and divers Actions have of late been brought for this cause, and have been adjudged good, and the engagement to marry, is not merely a ^{Spiritual.} spiritual matter; and this Action is not to compell the Marriage upon the Contract, but to recover damages, and here is temporal loss, and therefore the Action doth well lie; and Judgement was given for the Plaintiff, and it shall be intended, that the disengagement was to the party himself, and that there is no need to express notice of it, Stiles. 297. & 303, 304.

Bayle and Girds Case. Trin. 12 Jac. Rott. 1599. Ca. 152: Assumpsit, The Plaintiff declares, in Consideration he should dye divers Devonshire-Werries into several colours, naming so many as amounted in the whole to be Threescore, the Testator did promise to pay him a certain sum of Money, for the dying of every several Cloth; and the Plaintiff avers, he dyed the said Cloths, amounting to Fifty nine in toto; whereas indeed they were Threescore, and that the Money came to Nineten pounds; found and adjudged for the Plaintiff; motion to arrest it; for it was said, it appears he should have dyed Threescore, and he dyed but Nine and fifty, and so the sum aforesaid not due; and also the Jury hath assessed damages, occasione debiti prædicti, whereas should have been occasione non performance assumptionis; but after Error brought, the Court affirmed the Judgement, for that it was first aver-

Agreement to dye cloths and to have so much for them.

Pleading. Verdict.

red he dyed all, which appeared to be *Thyestore*, and the other was but a misnumbzing: And 2. It was a debt, and a promise implied upon it, Hobb 122.

Ca. 153.

*Nudum
pañum.*

Promise
to pay
one for his
labour to
get his
pardon.

Lampleighs Case. Mich. 13 Jac. in C. B. Rott. 712. Note, it was agreed by all the Justices, that a meer voluntary courtesie will not carry a Consideration to uphold an Assumpfit; but if that courtesie be moved by Suit, or request of the party that gives the Assumpfit, it will bind; for the promise, although it follows, yet it is not naked, but complex with the Suit before, and the merits of the party which procured the Suit: And therefore in the Case there, where the Defendant requested the Plaintiff, that he would labour, and endeavour to obtain his pardon for a Felony, and the Plaintiff doth his endeavour, by riding and journeying at his own charges from London to Royston, and back again to the King, to obtain his pardon, and in Consideration thereof, the Defendant doth promise to pay the Plaintiff a Hundred pound, though it did not appear that he did any thing towards the obtaining of the Defendants pardon, but riding up and down; yet the same was holden a good Consideration to bring an Assumpfit upon, Hobb. 145. See Cases 4, 39, 63, 82, 84.

Ca. 154.

Promise
to deliver
Oats for
so much
money,
promise
to pay the
money,

Lastilows Case. Hill. 11 Jac. C. B. Assumpfit, the Plaintiff declared, that the Defendant sold him so many Oats, as according to the rate of Sixteen Shillings nine pence the Quarter, did amount to Fifty two pound, to be delivered at such a time, which Money the Plaintiff promised to pay at such a time, and that the said Oats at such a rate came to ninety six Quarters, and six Bushels, which the Defendant had not delivered to him; upon Non-

Al-

Assumpsit, it was found for the Plaintiff, Error was brought, and Error assigned, that Ninety six quarters, and six Bushels, at the rate aforesaid, came to Fifty two pound three farthings, and so no breach; but the Judgement was affirmed, because it was not certain, whether it amounted to any more; and because it was not possible in effect to mince the measure, so that it hit the just sum, & de minimis non curat Lex. Hobb. pl. 114.

Mich. 22 Car. 1. Assumpsit, A. promiseth B. that if B. will pay Fifty pound to C. his Son, who was married to D. the Daughter of A. at such a time; that he will pay a Hundred pound to D. his Daughter at such a time, B. payes the Fifty pound to C. A. fails to pay the Hundred pound, B. dyes intestate, his Administrator brings an Action upon the Case, upon the promise against A. and adjudged the Action maintainable, though the Administrator receive no benefit by it if he recover.

Smithson and Wells Case. Mich. 24 Car. 1. B. R. In the Case of an Assumpsit it was holden per Curiam, that if one promiseth to save another harmless from any thing, he that made the promise, ought to do it at his peril, without request, and the request is not material, although the promise say, upon request; but if he be damnified; if I do recompence him upon request made, the promise is not broken, Stiles 141.

Christopher and Howes Case. Mich. 1649. It was resolved by the Court, in an Action upon the Case, upon an Assumpsit brought against an Executor, that an Executor may be charged upon a Collateral promise, if there were a breach of it in the life of the Testator, Stiles 158.

Johnsons Case. Mich. 1649. B. R. The Plaintiff

Case 155

Case 156

Case 157

Case 158

Promise
to pay for
wares to
be delive-
red to his
Son.

declared, that the Defendant, in Consideration that the Plaintiff would deliver to the Defendants Son such wares as his Son should desire, did promise the Plaintiff, that he would pay the Plaintiff for them; and avers, he delivered certain Wares to the Son, and the Defendant did refuse to pay for them; it was moved, that it doth not appear the Son of the Defendant did desire the Wares. and the Declaration ought to set forth an Actual desire. But the opinion of the Court was, that the Acceptance of the Wares was an Actual desire, and that is more than a Verbal desire, adjudged for the Plaintiff, Stiles 163.

Request.

Ca. 159.

Promise
for money,
to procure
Cattle to
be delive-
red.

Vaux and Drapers Ca's. Hill. 1649. R. R. A. and B. brought Assumpsit against I. S. and declared, that the Defendant, in Consideration of Ten pound paid by the Plaintiffs to the Defendant, promised to the Plaintiffs, to procure certain Cattle of the Plaintiffs, taken from them by a third person, to be re-delivered to them such a day; and for non-performance, they brought their Action; and being found for the Plaintiffs, the Defendant moved, that the Plaintiffs ought to have several Actions, and not one joyned Action, in regard the promise upon which the Action was brought, was not one promise; but several promises made to each Plaintiff. But the better opinion of the Court was, and so the Jury found, that the promise was made to them both, and not several; and the Consideration given is entire, and cannot be divided, and there is no inconvenience in joyning in the Action in this Case: But if one had brought the Action alone, it might have been questionable, and Judgement was given for the Plaintiffs, Stiles 203.

Several
promises.

Promise
made to
divers
persons.

Ca. 160.

Rosier and Langdals Case. Hill. 1650. B. R. Rott.

100. and Pasche. 1651. Assumpsit, An Executor brought an Action upon the Case against an Administrator, and declared, in Consideration that he would forbear Suit, till she had taken out Letters of Administration, she did promise to pay the Plaintiff a certain sum of Money owing to him by the Intestate; Judgement was for the Plaintiff; and upon Error brought, it was adjudged, the same was no good Consideration; for that the Defendant was not liable to be sued as Administrator, untill she had taken out Letters of Administration, except there were a cause depending, as here there was not; and it doth not appear that she did intermeddle with the goods; nor is the Defendant compellable to take Letters of Administration, for they may be granted to the next of Kin, by the Ordinary; the Court inclined that the Judgement should be reversed: But it was adjourned, Stiles. 248. See Hill. 1655. B. R. Boyle and Scarboroughs Case. Stiles 394 Act. &c.

Against an Administrator.

Promise upon forbearance of a causeless suit, to pay money.

Consideration invaluable.

Sharps Case. In an Assumpsit, in Consideration the Plaintiff will deliver certain Cloths that he had made for him, the Defendant assumed to pay for them, and said not to whom, it was adjudged good, and that it shall be taken to the Plaintiff, Latches Rep. 272.

Ca. 161. 162.

Feb. 162

Peck and Ingrams Case. Pasche. 1651. B. R. Assumpsit, the Plaintiff declared, that the Defendant, in Consideration that she, the Plaintiff, would leave her Fathers house, and come to the house of the Defendants at such a place, did promise unto her, that he would marry her; and lets forth, that thereupon she did leave her Fathers house, and did come to the Defendants house, & obtulit se in Matrimonium conjungi: Upon Verdict for the Plaintiff, it

Consideration, to come to the Defendants house.

was moved, that she did not shew when she left her Fathers house, nor that she gave him notice of it; the question was, whether the words obtulit se, implied notice: It was said, that if the thing be to be done by the party himself, no notice ought to be; otherwise, if it be done by a stranger. Jerman Justice, said, there is no tender of Marriage, if the other party be not there: It was adjudged for the Plaintiff, Stiles 263, and 273.

Case 163

King against Weeden. Pasche. 1651. Banc. sup. In arrest of Judgement upon a Verdict found for the Plaintiff, in an Action upon the Case upon an Assumpsit brought by an Administrator; two Exceptions were taken.

1. That the Plaintiff did not shew his Letters of Administration. And

2. That there is no good Consideration set forth to ground the Assumpsit upon; for it is, that the Defendant did promise, that if the Plaintiff would forbear to take his course for the Monies, he would pay them, which words are incertain, and he should have said his course in Law, and not generally his course. Roll, chief Justice, to the first answered, It is not necessary here to shew the Letters of Administration, for they are but inducements to the Action, and not the ground of it; and for the second Exception, the Consideration is certainly enough set forth, although the Latine be not very proper; therefore let the Plaintiff have his Judgement, nisi, &c. Stiles 264. See cases 55. 144.

Case 164

Nelson against Thompson, Trin. 1651. Banco Regis. Nelson brought an Action of the Case against Thompson, and did declare, that the Defendant, in Consideration that the Plaintiff would cease to prosecute a Suit in Law against him, did assume, and

promise unto the Plaintiff, that he would pay unto him Eight pound, and the charges of Suit, which he had been at, and for breach of this promise *Actio accrevit*, and sets forth his damage; to this Declaration the Defendant demurs in Law, and takes this exception, viz. That there is no time or place set forth where, or when he did forbear to sue the Defendant, as it ought to be, because it is a traversable matter: But Roll, chief Justice, answered, it is not necessary to alledge a place of a negative thing to be done, viz. to say that he did not prosecute the Suit in such a place, or at such a time, for he ought to surcease prosecution in all places, and at all times; therefore let Judgement be for the Plaintiff, except better matter be shewed Friday next. Stiles 142, 278.

Declaration.

Pleading.

Starkey against Mill. Mich. 1651. Banco Regis. Ca. 165. Starkey brought an Action upon the Case against Mill. upon two several Assumpsits, and obtained a Verdict upon both, and entire damages given; it was moved in arrest of Judgement, that one of the promises was not good, because there was no Consideration to ground it upon, and so the damages being entire upon both the Assumpsits, and one failing, Judgement was given for the Plaintiff, Stiles p. 296.

Two Assumpsits.

Damages entire.

Cottrell and his Wife brought an Action upon the Case upon an Assumpsit against Theoball. Mich. 1651. Banco Regis. Stiles. p. 297. and declared, that the Defendant, in Consideration that the Plaintiff would marry A. that is now the Plaintiffs Wife, did assume, and promise to the Plaintiff, to make good a Legacy given unto her by her Fathers Will, and would also give her Forty pound more out of his own part given unto him out of the said Will,

Ca. 166. Consideration of Marriage.

Promise to make good a Legacy.

Action by
Husband
and Wife.

at her age of Eighteen years, and declares further, that thereupon he did marry her, and that the Defendant had not performed his promise, and so concludes to his damage so much; upon Non-Assumpsit pleaded, and a Verdict for the Plaintiff, the Defendant moved in Arrest of Judgement, and took divers exceptions, the chief, viz. against the Wife, to which the promise was not made, yet was joyned in the Action, &c. After motion for Judgement at another time for the Plaintiff, A Nill capiat per Billam was ruled by the Court, Stiles. page 314.

Ca. 167.

Sur Inde-
bitatus
Assumpsit

Issue.

Pleading.

Kymlock brought an Action upon the Case upon an Indebitatus Assumpsit, against Bamfield, for making of Apparel. Mich. 1651. Banc. supr. The Defendant pleaded, that he became bound in a bond of Threescore pound to the Plaintiff, in satisfaction of the debt, and the Plaintiff accepted of it. The Plaintiff replied, that he did not accept it, to this replication the Defendant demurred, and shews for cause that the Plaintiff had tendered an Issue upon the non-acceptance of the Bond, whereas it should have been that the Defendant non devenit tentus; on the other side it was said, that it is well enough, and that it is sufficient to say, non accepit, and it is not necessary to say, he refused the Obligation, and though the replication be not good, yet the plea is also naught, and therefore no Judgement can be for the Defendant, Stiles. page 309.

Ca. 168.

Confide-
ration, a
former
debt and
forbear-
ance.

Hume against Hinton. Mich. 1651. Banco Regis. Hume brought an Action upon the Case against Hinton, and declared, that whereas the Son of the Defendant did in his life time owe unto the Plaintiff Eight pound, and dyed intestate, the Plaintiff did demand the said Eight pound of the Defendant, being pothier to the Intestate, whereupon the be-
ing

ing satisfied of the justness of the debt, did assume, and promise unto the Plaintiff, that if he would stay for the Money till Michaelmas next, that then he would pay it, upon Non-Assumpfit pleaded, and a Verdict found for the Plaintiff; the Defendant moved in Arrest of Judgement; afterward Judgement was given for the Plaintiff, because the Consideration and the Averment were held both good, Stiles. page 3^d 4.

If I have a Capias Ellegat, against the body and goods of I. S. for Fifty pound owing me by him, which I am about to Execute; and W. S. on the Defendants behalf, request me to stay the Execution of the Writ till such a day, and if I. S. this day pay me not my Fifty pound in Consideration of such stay of Execution of the said Writ, and for two shillings four pence to be given to him by me for the renewing of the Writ, doth promise me, that if I. S. pay not the Money at that day, he will pay it, Yelverton. 19.

Ca. 169.

Consideration to stay a suit, and money given.

Promise to pay the debt.

If a man be unduly arrested upon a Warrant, so that the Arrest is not good, and he, or another for him, promise the Plaintiff, that if he will discharge him of the Arrest, he will pay Ten pound upon request; it seems this is not good, Yelverton 25. See cases 269, 272.

Ca. 170.

Consideration, to discharge one unduly arrested promise to pay money

If I request one to give credit for me to another for two Tuns of Wine, that is to Fifty pound price, and he doth so, enters into Bond with him to another for so much, and am sued, and forced to pay it for him, and I tell him of it, and he thereupon, in Consideration thereof, promise to pay me the Money I have paid at Michaelmas next; this was adjudged a good promise and consideration, on which I may h. be Action.

Ca. 171.

Consideration, that one at my request did engage for another. Promise to pay the

But money,

Consideration
without a
promise.

But no Action will lie for this, I pray you trust I. S. with a Hundred pound, unless I add this, I will see you paid, or the like words, Yelverton, Rep. 45.

Ca. 172.

Consideration
past.

If a Marriage or Engagement by Suretiship be by another at my request at one time, and after it be done, and I told of it; if I then, in Consideration thereof, promise to do a thing, this will be a good Consideration, albeit it be past, Yelverton. 45. See cases 139, 101.

Ca. 173.

Consideration,
loan of
money.
Promise
to pay it.
Consideration
void.
Nudum
pactum.

If one declare, that in Consideration that his Wife, dum sola, &c. primo Junii, 43 Eliz. at the Defendants request, lent to him Thirty pound to be paid him upon request, that the Defendant did assume to pay it to the Wife upon request, and this was adjudged a good promise and Consideration: But if one deliver to I. S. a Bag, sealed with Money, and thereupon promise upon request to deliver it, no Assumpsit will lie upon this; for he can make no benefit of this Money, as he may of Money at large, Yelverton. 50. See cases 15, 37.

Ca. 174.

Promise
upon as-
surance of
Land, to
pay mo-
ney.

If one, in Consideration that I will assure to him Land, as Counsel shall advise, promise to pay me Thirty pound in hand, Nine pound fifteen shillings at Midsummer, Ten pound at Michaelmas, Twenty pound at Christmas; this is a good promise, Bendl. 158.

Ca. 175.

Consideration
of
forbearance.

Promise
to pay.

An Action upon the Case was brought in Staffordshire by Whorewood against Gibbons, how in an Account between them, the Defendant was found in Arrearages, and in Consideration that the Plaintiff deferred diem solutionis debiti predicti per parvum tempus, the Defendant did assume to pay it, and upon Non-Assumpsit pleaded, it was found for the Plaintiff, and it was alleged in arrest

of

of Judgement, that this was no Consideration, and the opinion of the whole Court (absente Anderson) was, that inso much as the proviso was made by him, by whom the debt was due, that it is a good Consideration, and that it is a common course in Action upon the Case against him by whom the debt is due, to declare without any words, in Consideration, and although that Gawdy moved, that parvum tempus may be three or four hours, or days, which is no Consideration, yet for the cause alleged; the Court said, that they saw no cause to stay Judgment, See in this Sect. Cases 55, 70, 144, 162.

Declaration.

Certainty.

An Action upon the Case was brought by Richard Body, against A. and declared, that whereas Kary Raleigh was indebted to Body in Fourteen pound, and the said A. was indebted to Raleigh in Fifty pound, in Consideration that the said K. R. allocavit eidem A. fourteen pound, & promisit ei ad exonendum eandem A. de Fourteen pound, parcel prædicti, Fifty pound, the Defendant did assume to pay to the said Plaintiff the said Fourteen pound, and the Court was moved if this were a good Consideration to bind the Defendant, and the opinion of all the Court (Anderson absente) was, that the Consideration was good, for that he was discharged of so much against Raleigh, and Raleigh might also plead payment of the Fourteen pound by the hands of the Defendant.

Ca. 176.

Promise upon an Abatement of so much of a debt, to pay money to another.

Consideration.

Thornton brought an Action upon an Assumpfit against Kemp, and declared, that the Testator was indebted to him in Ten pound, and in Consideration that the Plaintiff would give day to the Defendant, being Executor, to pay that, until Michaelmas, he assumed to pay that, & in factō dicit, that he hath given a day, and yet the Defendant hath

Ca. 127.
128.

Against an Executor.

not

Consideration, for
forbearance of a
Debt.
Promise
to pay it.

not paid that : The Defendant pleaded in Bar. that post prædictam assumptionem factam, and befoze Michaelmas, the Plaintiff did arrest him for the same debt, and demands Judgement, and upon that the Plaintiff demurred. Gawdy, when he hath given to him day of payment, usque ad Michaelmas, albeit he arrest him befoze that time, yet if he do not receive the Money befoze Michaelmas, the Consideration is performed. Fenner, I deny that, for to what purpose is the giving of day of payment until Michaelmas, if in the mean time, he may sue him. Popham, I agree with my Brother Gawdy, for insomuch that he onely forbears the payment until Michaelmas, and doth not promise to forbear to sue him, the payment is forbozn, if the money be not received.

Sharp and Rolt. One doth promise, that in Consideration he will deliver such things to the Daughter of the Plaintiff, that he will pay for them : Curia, it will be good notwithstanding this mistake ; and it shall be intended to be paid to the Plaintiff, Latch. Rep. 151.

Ca. 179.

Upon an
Instimul
computa-
tasset.

A and B. account for Reckonings between them ; B. is found a Hundred pound indebted to A. and B. doth hereupon assume to pay it to A. at a certain day, and doth it not ; A. brings Assumpsit upon it, Defendant pleads Non-Assumpsit ; found for the Plaintiff, Judgement affirmed in Error, for the Account confessed, and the Verdict proveth the debt, Hobb. 88.

Ca. 180.

Consideration to
assign a
Lease,
promise
to pay a
Rent.

Carters case. M. 29 Eliz. C. B. Assumpsit, The Plaintiff declared, that A. was Lessee, for years of Lands, the Inheritance of which was in the Plaintiffs Wife, upon which Lease a Rent was reserved ; and that the Defendant, in Consideration that the Plaintiff

Plaintiff would procure A. to assign the Lease to the Defendant; promised to pay the Rent to the Plaintiff, for all the Residue of the Term: It was objected, the Action did not lie, because the Plaintiff might have had a higher remedy for the Rent, viz. an Action of debt, or might distrain for it: But per Curiam the Action did well lie, for that upon the promise, an Action for the Rent is given to the Husband alone, whereas the Rent was not due to the Husband, but in the right of his Wife, and before it was payable upon the Land, but now it is payable to the person of the Husband: Judgement was given for the Plaintiff, Leonard. 43. See Trin. 32 Eliz. C. B. See Read and Johnsons case. Accord.

Husband
and Wife.

Gill and Harewoods Case. Assumpsit, The **Ca 181.**
Plaintiff declared, That the Defendant was indebted to the Plaintiff in a certain sum of Money, and shewed how the Defendant, in Consideration that the Plaintiff per parvum tempus deferret diem solutionis, did promise to pay, &c. found for the Plaintiff; moved in Arrest of Judgement, that there was no Consideration, for that the time limited for forbearance was uncertain, and parvum tempus may be put punctum temporis: But the exception was not allowed, for that the debt in it self is a sufficient Consideration, Pasche. 29 Eliz. C. B. Leonard 61, 155, 6.

Consideration,
forbearance of a
debt.

Promise
to pay it.

Uncertain-
ty.

Howell and Trivamans Case. Hill. 30 Eliz. in B. **Ca. 182.**

R. Assumpsit, The Plaintiff declared, that he delivered goods to the Brother of the Defendant, who made the Defendant his Executor, and dyed, and the Plaintiff came to the Defendant, and spake of him concerning the goods; upon which speech the Defendant promised the Plaintiff, that if the

Against an
Executor.

Plaintiff

Promise upon proof of the property of goods, to pay for them.

Averment in pleading.

Consideration valuable.

Plaintiff could prove that the goods were delivered to the Testator, he would pay the value of them to the Plaintiff, and averred the goods came to the Testator's hands: Upon Non-Assumpsit; it was found and adjudged for the Plaintiff, whereupon Error was brought, and two Errors assigned; the first, that the Plaintiff had not averred, that he had proved the delivery of the goods to the Testator, for the words of the promise are, si probare potuisset. 2. That here was not any Consideration, for that the Defendant had no profit nor advantage by the bailment of the goods to the Brother of the Defendant; and also it is a thing before executed, and not depending upon the promise, nor the promise upon it, and to that purpose. Hudson's Case in B. R. was vouched, viz. The Defendant, in Consideration that he was natural Son and Administrator to the Intestate, and that the goods of his Father came to his hands, promised to pay the debt to the Plaintiff; and it was found that no goods came to his hands, and there it was holden, that the Consideration, that he was Administrator, and Son of the Testator, was not of any force to maintain the Action; but notwithstanding these causes, in the principle case; the Judgement was affirmed; and in that case it was said, that if an Action be brought upon an Assumpsit of the Testator, Judgement shall be of the goods of the Testator: But if the promise of the Executor, then of his own goods, Leonard. 93, 94. See cases 39, 180, 181, 189, 213, 237, 238, 387, 388.

Pearle and Edwards Case. Pasche. 30 Eliz. Assumpsit, The Defendant leased Lands to the Plaintiff tenning Rent, and, after some years expired, the Lessor, in Consideration that the Lessee had occupied

empted the Land, and had paid his Rent; promised the Plaintiff to save him harmless against all persons, for the occupation of the Lands for the time past, and also to come. Afterwards I. S. distrained the Plaintiffs Cattle upon the Land, upon which the Plaintiff brought Assumpfit against the Defendant; it was objected, that the payment of the Rent is no Consideration, for he hath the profits of the Lands for it; and also the no Consideration is past; but it was adjudged, the Action did well lie, for that the occupation, which is the Consideration continues; like a gift in Frank-marriage, after the Espousals, lyeeth, and yet the marriage is past, but the Bond continues, and here the payment of the Rent is Executory every year, and if the Lessee be saved harmless for his occupation, he will pay the Rent the better: adjudged for the Plaintiff, Leonard. 102.

Consideration, that the Lessee having had Land, and paid his Rent to the Lessor Promise to save the Lessee harmless, Consideration past, yet good.

Rivet and Rivets Case. Trin. 32 Eliz. B. R. Assumpfit, The Plaintiff declared, That where the Defendant pretended that one R. made his Will, and thereby gave Legacies to the Defendant, and the Plaintiff sued in the Prerogative Court, to disprove the Will; and if he prosecuted suiffer. he might have disproved the Will, and so defeated the Defendant of his Legacies: That the Defendant, in Consideration that the Plaintiff ultra non procederet, promised to give the Plaintiff a Hundred pound, and the Plaintiff averred that he surceased his Suit, and further declared, Licet, the Defendant ad hoc requisitus tali die: It was said, that here is not any Consideration, for the Defendant hath not any means to compel the Plaintiff to surcease his Suit, and if he once surcease his Suit, yet he may begin again; and then for the Plaintiff

Ca. 184.

Consideration, to forbear Suit about probate of a Will: Promise to pay money.

to

Request.

to have shewed a Release, or discharge of it: But it was resolved that the Action did well lie. And Trin. 28 Eliz. Rot. 523. Smith and Smiths Case was vouched to prove it; where in Assumpsit, upon Consideration that the Plaintiff should not implead the Defendant upon a Bond, the Plaintiff had Judgement to recover, and also in the principal Case: the Request generally lies, licet requisitus, was well laid, Leonard. 118.

Ca. 185.

Against
an Execu-
tor, upon
the pro-
mise of
the Testa-
tor, for a
Marriage
portion.

Notice.

Berifford and Goodreshes Case. Mich. 14 Jac. B. R. Assumpsit, against an Executor, upon a promise made by the Testator for a Marriage-portion upon a Verdict for the Plaintiff; it was adjudged for him, and affirmed in Error, and yet two Judgements were cited to have been given against it. Trin. 13 Jac. B. R. Sanders and Estarbies Case, and Herbon and Elliots Case. And therein it was held, that the Action did well lie against the Executor upon the Assumpsit of the Testator: And that no Notice was requisite to be given of the said Marriage, although part of the Money were to be paid upon the Marriage-day, for the promise makes it a debt which still continues: And it was resolved, that albeit the Money were to be paid after the death of the Testator, yet it is binding and Actionable, Bulstr. 3. 235, 44 Eliz. B. R. Hodges and Warelies Case. Trin. 7 Jac. B. R. Bready and Cobbs Case.

And the like Case was between Alfred and Blackamore. Trin. 1 Car. 1. The Father promised to pay the Marriage-portion ad diem Maritagii, or infra decem dies post Maritagium: And it was adjudged for the Plaintiff, and agreed, that no notice was to be given, of the promise made by the Father, it will be presumed he had notice; and there the difference is taken where the payment is to be made to

to the party, and where to a stranger upon Request, Bulstr. 3. 326. See Case in this Section, 73.

Lane and Mallory in the Exchequer-Chamber. Ca. 186.
Pasche. 11 Jac. Assumpfit, That whereas A. owes me Two hundred pound, and C. and D. are bound to A. by two Statutes of a Hundred pound a piece, and he delivered those Statutes to me, to the intent I may be satisfied my Two hundred pound, and A. being dead, and E. his Son pretending to be his Executor, in Consideration that I will deliver him these two Statutes at his request, he doth promise to pay me Fifty pound at one day, and Fifty pound at another day: It was adjudged and affirmed in Error, that the Consideration was good and valuable, Hobb. Rep. pl. 6.

Consideration, to deliver back to me Statutes delivered for security of money. Promise to pay the debt.

Smith and Hitchcocks Case. Trin. 33 Eliz. B. R. Ca. 187.
Assumpfit, where the Plaintiff declared, the Defendant was indebted to him, 19 Maii, 29 Eliz. The Defendant, in Consideration that the Plaintiff would forbear to sue him until such a day after, promised at the said day to pay the debt: The Defendant pleaded, that 29 Maii, 29 Eliz. he was indebted to the Plaintiff in the said sum, for assurance of which afterwards, he acknowledged a Statute to the Plaintiff, upon which he had execution, and levied the Money absque hoc, that he was indebted to the Plaintiff, antea vel post, the said day aliquo modo. It was holden by the Court, that the cause of the Action is the assumption, and there the Consideration is not traversable, and alwayes the ground of the Action is traversable, and the Assumpfit in this Case, is the ground of Action, and not the debt; Judgement was for the Plaintiff, Leonard. 252, 253.

Promise, upon forbearance of a debt, to pay it.

Statute entred in to for debt upon an Assumpfit.

Pleading

Fowke and Boyle. Mich. 1652. B. R. It was ad- Ca. 188.
judg.

Deceit.

judged, that for a deceit in a Contract, as for selling false Bills of publick Faith, this Action will lie, Stiles. 343.

Ca. 189.

Consideration,
Lease for
years, and
promise
to be sa-
ved harm-
less from
incum-
brances,
promise
to pay
Money.

Leigh and Gotyer. M. 15 Jac. B. R. Assumpsit, whereas upon the 24 June, 12 Jac. at D. the Defendant demised to the Plaintiff a Close, called the Leet, for two years, in Consideration whereof, the Plaintiff, adtunc & ibidem, assumed to pay for that Lease Six and twenty pound; and that the Defendant adtunc & ibidem thereupon promised to discharge and save him harmless, from all charges, troubles, and incumbrances; and alledges in fact, that he had not discharged him of all charges and incumbrances: For one Mary Everard, 7 August, 12 Jac. distrained in the said Close, four of his Kine, for a sum of Money, for which the said Close, at the time of the distress, was lawfully charged, and liable thereto, and the said Kine impounded, and detained, until he was enforced to pay the said money; after Verdict for the Plaintiff, upon Non-Assumpsit pleaded, it was moved in arrest of Judgment, that the Declaration was not good; because he doth not shew that there was any charge before due, nor by whom granted: And it might be charged by the Plaintiff himself after the said Lease made, and therefore it is no express charge upon this promise; and for this cause it was held to be ill by all the Court; wherefore it was adjudged for the Defendant, Croo. 2. part 444.

Ca. 190.

Consideration a
Debt past.

A. is indebted to B. in Four pound lent, A. assumes to pay the said Four pound by five shillings per month, after A. makes default of payment the first month; the Plaintiff declares upon this Assumpsit, that the Defendant had not paid him the said Four pound, nor any part thereof, to the damage

mage of the Plaintiff Six pound: The Defendant pleads Non-Assumpsit found against him, damages given Four pound, adjudged and affirmed in a Writ of Error; for the Jury in this Case, where an Action was brought before all the months expired after the Assumpsit, hath election to find the whole sum in damages, or for the time of non-payment, and if the Verdict be for the whole sum, and Judgement thereupon, it shall be a Bar in another Action upon the said Assumpsit, for default of payment of the said Five shillings any month after; in this Case the Plaintiff may declare for damages, as in truth it is, and upon every default shall have a new Action upon the Case, the Plaintiff hath Election otherwise in an Action of debt upon a Contract, or Bill to pay at several dapes, where the Contract or Bill is for the whole sum distributed to several payments at several times. The Assumpsit in the principal Case is in nature of a Covenant, judged and affirmed in a Writ of Error, the Venire facias out of Southwerk, where it ought to be Southwark, yet well enough, Jenkins 333. Case 68: Beckwick and Not. Croo. 2 part 504.

Promise to pay it by so much a month.

Damages for the whole.

Promise to pay a debt at several dayes.

Parker and Long. M. 1 Car. 1. In an Action upon the Case, the Declaration was, that whereas the Plaintiff was possessed, and in possession of such a House, in Consideration that he would deliver the possession thereof to the Defendant, the Defendant promised to pay Five pound, and shewed how he had delivered it. Rolls moved in arrest of Judgement, that it was not shewed that he was not lawfully possessed, or what estate he had, and therefore it is no Consideration; but it seemed to be good, for if he had illegal possession, yet to put the Defendant in possession, is a good Consideration, and it was adjourned, Bendl. 151.

Ca. 191.

Consideration to deliver a House. Promise to pay money.

Consideration not valuable.

Ca. 192. Tyler and Leonard. M. 1. Car. 1. Error upon a Judgement in B. R. in an Action upon the Case, that whereas Tyler was in debt to Leonard in Twenty pound for Beer. decimo Maii, 20 Jac. condemn die & anno he promised to pay this. Serjeant Bridgman assigned for Error, that it is not laid, sic indebitat. existens. 2. For saith, in consideration inde: But the Judgement was affirmed, first it shall be intended the same day, Bendl. 157.

Ca. 193. Richard Bartlet brought an Action upon the Case against Tho. Bartlet, and he declared upon an Account, and shewed that the Defendant was found in arrearages in Twenty pound, which he promised to pay when he should be requested, and now the Plaintiff had not laid any day or place of request in his Declaration; and Ashley moved in arrest of Judgement, that the Declaration is not good, for the request is also part of the promise: But Hobbert, chief Justice, said, that when a man brings an Action upon the Case for a thing which was originally a debt, the Plaintiff need not lay any time or place of the request, but when the Action is brought for a Collateral thing, there he ought to lay a day and place of the request, and so it was adjudged accordingly in the same Case, Winch. 2.

Ca. 194. Potter and Turner. P. 19 Jac. B. R. A. was indebted to B. in Twenty pound, and C. was indebted to A. Thirty pound, and A. in satisfaction of the debt which he owed to B. assigned the debt of Thirty pound, which C. owed to him, and made a Letter of Attorney to lue in his name; A. and B. acquainted C. with this agreement, and C. promised to B. in Consideration that he will forbear till such a day, that he will pay him the money; and upon this promise he brought the Action against C. and he pleaded

Non.

Assign-
ment of
one debt,
to satisfy
another,
and a Letter
of Attorney
to sue.

Non-Assumpsit, and it was found for the Plaintiff: And it was moved in arrest of Judgement, that the Consideration was not sufficient, according to *Banes Case*. Cook. 9. If Executors, who had not Assets, promise to pay a debt of the Testator; this shall not bind them, because they who made the promise were not chargeable; but on the other side, it was said by Whitwick, that this was a good Consideration, for the assignment of that debt was lawful, and no maintenance at all, as appears by 15 H. 7. 8 And a recovery by B. against C. is a good Plea in Bar, in an Action brought by A. against C. But *Doderidges*, *Houghton*, and *Chamberlin* onely present, to the contrary; for B. here had onely an Authority to sue, and this is at all times countermandable by A. As if I deliver goods to my Servant to deliver over to I. S. and I. S. promise my Servant, that in Consideration he will deliver them to him, he will give him so much Money; this is no Consideration, except that they are delivered accordingly; for this is onely an Authority to deliver goods which are alwayes countermandable by me: And Judgement was entered for the Defendant, *Winch.* 7. See cases 181. 176, 174, 180, 167, 136.

Consideration of forbearance of it.
Promise to pay it.
Consideration not valuable.

Authority countermandable,

Mayes and Mayes. T. 19 Jac. brought an Action Ca. 195. upon the Case against *Sir Isaac Sidley*, upon a promise, and shewed, that one named *Holdish* was indebted to the Testator of the Plaintiffs in Twelve pound upon a Bond which became due, and that the Defendant, in Consideration that the Plaintiffs would forbear to prosecute a Suit upon the same Obligation, he promised to pay that; and the Plaintiffs shewed that they had forgiven him till such a day, &c. and upon Non-Assumpsit pleaded, it was found for the Plaintiffs, and now it was moved

Promise upon forbearance to sue for a debt, to pay it.

Forbearance to sue, how to be taken.

in Arrest of Judgement by Kitcham Serjeant of the King, that this Declaration is not good, for this forbearance ought to be for ever, and not a temporary forbearance onely, for the Defendant by his promise had made the debt his own, as if the Assumpsit and promise had been to forbear to come to my House; this ought to be a perpetual forbearance; and here the assumption of the Defendant amounts to a Release in Law to the principal, and yet he agreed, if this had been general, that he had forborn, and had not shewed he had forborn till such a day, the Declaration had been good, Hobert, if the promise had been to forbear till such a day; there he may sue the Debtor if he do not pay it the day; and it was adjourned, Winch. 22. See Cases 55, 144, 162, 174.

Ca. 196.

Consideration, to keep a Prisoner in my House.

Promise to save me harmless.

Consideration good.

Battersey. M. 2 Jac. C. B. An Action upon the Case brought against one Hordecree upon an Assumpsit, and declared that the Defendant had arrested one Battersey, by virtue of a Commission of Rebellion out of the Chings Ports, and that the Plaintiff keeping a Common Inn, the Defendant brought the said Battersey to his Inn, and requested the Plaintiff to keep him a day and a night, and promised, in Consideration thereupon, that he would save him harmless; and he shewed that he kept the Prisoner accordingly, and that the said Battersey brought an Action of false imprisonment against him, and recovered against him, upon which the Action accrewed: And upon Non-Assumpsit pleader, it was found for the Plaintiff, and now was moved in Arrest of Judgement, because he had not shewed that the said Battersey was lawfully Arrested and Imprisoned; and then if a man will without cause arrest a man, and promise in this Case, no Action will

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prison
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will lye, for it is no Consideration, because the imprisonment is unlawful; but Hobert, Chief Justice, Hutton and Winch contrary; for be the imprisonment lawful, or not lawful, he might not take notice of that: As if I request another man to enter into another mans ground, and in my name to drive out the Beasts, and impound them, and promise to save him harmless; this is a good Assumpfit, and yet the Act is forcious; but by Hutton, where the Act appears in it self to be unlawful, there it is otherwise; as if I request you to beat another, and promise to save you harmless; this Assumpfit is not good, for the Act appears in it self to be unlawful, but otherwise it is as in our Case, when the Act stands indifferent: But Hobert said, it may be there is a difference between a publick Officer, and a private man, for if the Sheriff arrest a man unlawfully, and promise as before; this is a good Assumpfit, but perchance otherwise of a private man, as here; but in the principal Case the Defendant had pleaded Non-Assumpfit, and this implies a lawful imprisonment; for otherwise the Defendant might have given the unlawful imprisonment in evidence and Judgement was commanded to be entered for the Plaintiff, Winch. 48.

Consideration unlawful.

Brand and Lisley. M. 7 Jac. B. R. Assumpfit, Ca. 197: The Plaintiff declares, that whereas one Williams was indebted to him in a Hundred pound, and for satisfaction of this debt, delivered to the Defendant divers goods in specie, amounting to the value of the debt, to satisfy the Plaintiff the said Hundred pound: And whereas the Plaintiff came to the Defendant, and required him to satisfy the said Hundred pound, with the Goods in his hands, the Defendant, in Consideration that the Plaintiff

Consideration, the delivery of goods, to satisfy a debt.

Promise
by the
Baylee
upon for-
bearance,
to pay it.

Confide-
ration va-
luable.

Ca. 198.

Promise
to pay
money
upon a
Marriage.

Notice.

would forbear him for a certain time, assumed, and promised at such a day to pay and satisfy the debt. The Plaintiff alleges in fact, that he forbore the Defendant accordingly, yet hath he not paid the Hundred pound, though such a day required, &c. And upon Non-Assumpsit pleaded, it was found for the Plaintiff, and shewn in arrest of Judgement, there was no Consideration on the part of the Defendant for the delivery of Goods to him by Williams, he hath no interest in the Goods, no profit by them, and so no benefit at all: But was adjudged for the Plaintiff; for by the delivery of Goods to the Defendant to satisfy the Plaintiff the Hundred pound, the Plaintiff hath interest and propriety in the Goods, and then by the Plaintiffs forbearance of the Defendant for some time, the Goods being due to the Plaintiff presently, the Defendant had benefit, & quid pro quo. Yelverton of Council with the Defendant, Yelverton. 164.

Brenly and Todd. M. 7 Jac. B. R. Assumpsit, The Plaintiff declares, that in Consideration the Plaintiff, at the request of the Defendant, would take to Wife Ja. S. his Servant, the Defendant assumed to pay to the Plaintiff Fifty pound upon request: the Plaintiff shewed in fact, that he, trusting to the promise of the Defendant, married I. S. such a day, yet had not the Defendant paid the Fifty pound, though required such a day, to the damage, &c. And upon Non-Assumpsit pleaded, was found for the Plaintiff, and alleged in arrest of Judgement, that the Plaintiff ought to give notice to the Defendant of the Marriage, because the Defendant is a stranger to it by presumption, and cannot have notice; but adjudged for the Plaintiff, and that notice is not necessary, for the Defendant hath bound him.

himself by his promise, as strong as by his Bond; and also the notice is not any parcel of the promise, and therefore need not be alledged; and was never seen that notice was inserted in the Declaration, for at his peril he ought to take notice, Yelverton. 168. and Noy. 140.

M. 44 Eliz. B. R. Assumpsit, H. Goring was indebted to Smith in Two hundred and five pound upon a simple Contract: Smith made I. Goring his Executor, and dyed, I. Goring the Executor agreed, and was content to take of H. Goring for the Two hundred and five pound, One hundred and fifty pound, and also agreed to take the Hundred and fifty pound by Twenty pound per annum; in Consideration of which, H. Goring assumes, and promises to pay to the said I. Goring the said Hundred and fifty pound, by Twenty pound per annum; and for non-performance of the promise, I. Goring brought his Assumpsit against H. Goring; and upon Non-Assumpsit pleaded, was found against H. Goring, and adjudged a good Consideration, notwithstanding it was not alledged that the Defendant was discharged of the Two hundred and five pound, for that if he were charged therewith, he might have an Assumpsit against the Plaintiff upon his promise and agreement to take a Hundred and fifty pound for the Two hundred and five pound, Yelverton, 12.

Ca. 199.

For an Executor.

Consideration, to take less than ones debt, promise to pay it.

Leveret and Rivet. M. 16 Jac. B. R. Assumpsit, Ca. 200, whereas one Tho. Ogle had acknowledged himself to be indebted to the Plaintiff in Ten pound for divers Trespasses done unto him, which Ten pound the Plaintiff at the Defendants request was contented to accept of it: The Defendant, in Consideration that the Plaintiff, at the Defendants request, would

Consideration, that he was content to take Ten pound for trespasses, and to discharge him of it, and to let him take his goods of the house, &c. Promise to pay the ten pound

Pleading. Declaration.

Two parts of the Consideration.

Ca. 200.

Consideration to buy such Land, and give so much for it.

would acquit and discharge the said Thomas Ogle of the said debt, and permit him to carry out of the Plaintiff's house, certain goods of the said Thomas Ogle, which were then there, assumed and promised the Plaintiff to pay unto him the said Ten pound at such a day, and alledges in fact, that he acquitted and discharged the said Thomas Ogle of the, said Ten pound debt, and suffered him to carry away his said goods out of his house; and that the Defendant had not paid the said Ten pound to the Plaintiff according to his promise: The Defendant pleaded Non-Assumpsit, and found against him: And it was now moved in arrest of Judgment, that the Declaration was not good, because he doth not shew how he acquitted the said Thomas Ogle, for it cannot be without deed, which ought to be particularly shewn: And although that the Consideration, to suffer him to carry out of the Plaintiff's house the said goods, had been a sufficient Consideration, and was well adjudged, if it had been by itself; yet when it is joyned with another Consideration, which is good, if it had been well alledged to have been performed, it not being well alledged to have been performed, it makes the whole Declaration to be ill; and of that opinion was the Court; wherefore it was adjudged for the Defendant, Cro. 2 part 503.

Hill and Wade. H. 16 Jac. B. R. Assumpsit, in Consideration that he would buy such Land of the Defendant, and pay unto him Forty pound for it; the Defendant promised to pay unto the Plaintiff Nine pound, which I. S. owed unto the Plaintiff, when he should be thereunto required: And alledged in fact, that he bought the Land, and paid Forty pound for it, and that the Defendant, licet sepius

requisitus, had not paid the Nine pound. After promise
 Verdict upon Non-Assumpsit pleaded, and found ^{to pay}
 for the Plaintiff; it was moved in arrest of Judg- ^{money}
 ment, that the Declaration was not good, because ^{upon re-}
 there was neither time nor place alledged of the ^{quest.}
 request: And although Gwin for the Plaintiff
 oftentimes moved, that it was not material, because
 the Defendant pleaded Non-Assumpsit, and so hath
 not taken advantage thereof; the Court resolved,
 that for as much as it is a strangers debt, and was Request.
 no duty by the Defendant before the promise, nor
 payable, but upon request, and so no breach, until
 request be made; therefore to enable the Plaintiff
 to the Action, an exprels request ought to have been
 alledged, and a sapius requisitus will not serve;
 and Houghton, Justice, took this difference, where
 a request is upon a duty; as if I sell an Horse for
 Five pound to be paid upon request, there a licet
 sapius requisitus is sufficient, and where it is upon
 a Collateral matter; for there he ought actually to
 alledge a request, although it be joyned upon the
 Assumpsit, and this difference was affirmed in
 Greggs Case in a Writ of Error: And so the opi-
 nion of the Court was against the Plaintiff, & ad-
 journatur, and afterwards adjudged for the Defen-
 dant, Croo. 2. part 523. See Cases 120. 125, 255.

A. declares against B. in an Assumpsit, that Ca. 202.
 whereas A. had sold to B. certain Cloths for Three
 hundred seventy pound, the one moiety to be paid
 within Fourteen dayes, which was paid, and the
 other moiety at the end of Thre moneths after;
 at the end of these Thre moneths, the other moy-
 ety was not paid, whereupon B. assumed to A. if
 he would accept of a Bill from him of a Hundred
 thirty seven pound to be paid to him one moneth
 after,

Conside-
ration, for
Cloth sold
for money,
part in
hand, and
part at
the day to
come, and
that he
would
then ac-
cept a bill
for part
of the
mony.
Promise
to give
the bill.

Two As-
sumpsits.

Entire da-
mages.

after, which the Plaintiff did accept, and that at the time of the payment of the said Hundred thirty seven pound, B. did not pay it, nor the Eighty four pound residue of the said other moiety of the said sum of Three hundred seventy pound : The Defendant pleaded Non-Assumpsit found against him ; the Plaintiff had Judgement affirmed in Error, although intire damages were assessed, although the Bill was accepted, although no exprels Assumpsit was for the Eighty four pound, although upon those two Assumpsits the Defendant pleaded Non-Assumpsit generally, although they were joyned in one Action, where a Bill is made for one sum ; and hereupon an Assumpsit is brought upon an Assumpsit made after the Bill, made for the sum in the Bill, both not lie, and an Assumpsit gives onely damages and costs, and varies from a Judgement for debt, which gives the debt with damages and costs ; where the debt is due, and an Assumpsit to make a Bill, recovery upon such an Assumpsit is a Bar to the Suit upon the Bill ; in this case upon the sale of the Cloths for Three hundred seventy pound, although the moiety was paid, and a Bill for One hundred thirty seven pound, yet Eighty four pound remains of the said Three hundred seventy pound not paid, and an Assumpsit lies for this, although it be but part of the said Three hundred seventy pound, where the Court held, that the moiety of this Three hundred seventy pound onely was paid, and this Assumpsit was an exprels for a Hundred thirty seven pound, and implied Assumpsit for the Eighty four pound upon the sale, Non-Assumpsit extends to those two Assumpsits, and entire damages are well given, if the Bill and the Assumpsit for the Three hundred and seventy pound were pay-
able

able at the same day, and were made at one time,
the Bill determines the Assumpsit, Jenkins. 331.
Case 62. Croo. 544. Heath and Dauntley.

Austin and Bewly. M. 17 Jac. B. R. Error of Ca. 203.

Judgement was given in Rochester in an Assumpsit,
where the Plaintiff declared, that the Defendant
being indebted to him in Fifty pound, in Consideration the Plaintiff would give time unto him for
the payment, till the first day of Easter Term,
promised to pay, &c. And alledgeth in fact, that he
gave day for the payment, &c. and that he had not
paid; upon Non-Assumpsit pleaded, and found for
the Plaintiff, and Judgement accordingly; Error
was assigned, for that it was not shewn how the debt
accrued; for it was said that a general Indebita-
tus was not sufficient where it is the ground of the
Action; as to say, whereas he was indebted unto
him in such a sum, he promised to pay; there he
ought to shew how he was indebted; but where it
is but an inducement to the Action, as it is here, in
Consideration that he should forbear the debt until
such a day (for that they are agreed upon the debt,
and so it is but a Collateral promise) it is good en-
ough, without shewing how. Secondly, It was
objected to be erroneous, because it was not shewn
when Easter Term began; sed non allocatur, for
it is well known to the Court, and the Action is con-
ceived after the end of the Term; wherefore the
Judgement was affirmed, Croo. 2. part 548.

Indebita-
tus As-
sumpsit.

Declarati-
on.

Pleading.

Clark and Thomson. P. 18 Jac. B. R. Assumpsit, Ca. 204.

In Consideration the Plaintiff would marry the
Defendant, he promised he would leave her worth
Five hundred pound, and alledgeth in fact, that
he did not leave her worth Five hundred pound.
Exception was taken in arrest of Judgement, after

Verdict

Consideration of marriage, promise to leave her worth Five hundred

Against an Executor. Assumpsit determined.

Verdict for the Plaintiff, that an Assumpsit lies not against an Executor, upon a Collateral promise of the Testator; and that this personal Contract by the Enter-marriage, was determined, as if a release had been made; or, as where the debtor takes the debt to himself, the debt is determined, sed non allocatur; for it never was a duty in the life of the Baron, nor ever could be released by him: wherefore it was adjudged for the Plaintiff. Note this Judgement was affirmed in a Writ of Error in the Exchequer, and Justice Winch shewed, that such a Case was in B. C. betwixt Smith and Stafford, where the Baron promised to the Feme before Marriage, that he would leave her worth a Hundred pound; and three Justices held, the Action will lay against the Executor of the Baron, Croo. 2. part 571.

Ca. 205.

Promise, for money, to assure Land, as Counsel shall advise.

How it shall be taken.

Coles and Kinder. P. 18 Jac. B. R. Assumpsit, In Consideration the Plaintiff would pay unto the Defendant the sum of Twenty pound, he promised to assure such Land by such reasonable assurance, as by the Plaintiff should be advised and required, who devised and required an Indenture of Feoffment, with covenant to discharge and save him harmless from all incumbrances made by the Defendant, and for further assurance upon request to be made within such a time; and for not sealing this assurance, the Action was brought; And it was thereupon demurred, for it was said, although he be to make assurance, yet he is not to be bound with any Covenants, and therefore he is not bound to seal that assurance: And of that opinion was the whole Court, that although these Covenants are ordinary and reasonable, yet the agreement not being to make it with reasonable Covenants, but onely reasonable

sonable assurance, he is not bound to seal it, for it is not any part of the assurance; and the assurance may be without any Covenants; whereupon it was held, that the breach was not well assigned, and the Declaration was not good: But they would advise thereof; and afterwards being moved again, they all held their former opinion, that this assurance, with these Covenants, was not within the promise; wherefore the breach thereof was ill assigned, and adjudged it for the Plaintiff, Croo. 2. part 371.

Davies and Warner. M. 18 Jac. B. R. Assumpsit, Ca. 206. whereas the Defendants Testator was indebted unto him in Three and thirty pound, that in Consideration the Plaintiff would forbear to sue the Defendant, till he had Execution upon such a Judgment, the Defendant promised to pay the said Thirty three pound upon request, after he had obtained Execution of such a Judgment; and alledgech in fact, that he had obtained Execution of the said Judgment, & licet requisitus, &c. such a day had not paid, upon Non-Assumpsit pleaded, and found for the Plaintiff, it was alledged in arrest of Judgment, that it doth not appear how he was indebted, nor that he had Assets, otherwise there is no cause to bind him; sed non allocatur, for if the Action were founded upon the debt, then he ought to shew how he was indebted: But is grounded upon his own promise, and it shall be intended he was indebted, otherwise he would not assume; wherefore it was adjudged for the Plaintiff, Croo. 2. part 594.

Broad and Jolliffe. M. 18 Jac. B. R. Assumpsit, Ca. 207. whereas the Defendant was a Mercer, and kept a Shop at Newport, in the Isle of Wight, and had his

Consideration, to forbear to sue till he had Execution upon a Judgment &c.

Promise to pay upon request Pleading.

Conside-
ration, to
buy and
pay so
much for
his Wares
in his
shop.

Promise
not to
keep a
Mercers
shop in N.

Conside-
ration a-
gainst
Law.

Assumpfit
against
Law.

his Shop furnished with divers old and sullied Wares; and the Plaintiff had a Shop there, furnished with new and fresh Wares: In Consideration the Plaintiff would buy of him all his said Wares in the said Shop, and would pay for them such prizes as he paid for them when he first bought them, that he assumed he would not then any longer keep a Mercers Shop in Newport; And alledges in fact, that he bought of him all his said Wares, and paid him Three hundred pound for them, being the price which he had paid for the said Wares when he bought them, whereas in truth they were not then worth a Hundred pound: And that the Defendant, contrary to his promise, kept his said Shop, and furnished it with new and fresh Wares, &c. to the Plaintiffs damage Five hundred pound; after Non-Assumpfit pleaded, and Verdict for the Plaintiff to his damage of Forty pound; it was moved in arrest of Judgement, that this Assumpfit is against Law, to restrain any to use their lawful Trade: And for that purpose was cited 2 H. 5. 5. where an Obligation, that one shall not use the Trade of a Dyer, was held to be void: And of that opinion was Houghton, Justice, for the reason above mentioned: But all the other Justices held, that it was a good Assumpfit, for it is voluntary, and upon a valuable Consideration, one may restrain himself that he shall not use his Trade in such a particular place; for he who gives that Consideration, expects the benefit of his Customers: And it is usual here in London, for one to let his Shop and Wares to his Servant, when he is out of his Apprenticeship; as also to covenant, that he shall not use that Trade in such a Shop, or such a Street. So for a valuable Consideration, and voluntarily

one

one may agree that he will not use his Trade; for
volenti non fit injuria: And it is not like to the
 Case in 2 H. 5. before cited; for there it is alledg-
 ed, that he was compelled to enter into such a Bond;
 it being an offence, for which Hull said, he would,
 have committed him, had he been there; yet there
 the issue is taken, that he did not use the Trade of
 a Dyer in the said Willage, which proves, that the
 Defendant durst not demur thereupon, but the bond
 was allowed good: But here it is upon a good con-
 sideration, viz. that he should pay Three hundred
 pound for Wares, which were not worth a Hun-
 dred and fifty pound, for which he made the said
 promise, and is strong enough against himself. And
 Montague, Chief Justice, cited the Case in 13 H.
 7. If a Feoffment be made upon condition that
 he shall not alien, it is a void condition, for it is a-
 gainst Law: Yet a Covenant that he shall not
 alien, is good; wherefore it was adjudged for the
 Plaintiff. And in M. 19 Jac. was affirmed in a
 Writ of Error before all the Justices and Barons
 of the Exchequer, for they held, that one may vo-
 luntarily give over his Trade, and is not compella-
 ble to use it, especially in one certain place; and
 therefore he may upon good Consideration agree,
 that he will not use it within such a Willage, and
 upon the matter, it is but the selling of his Cu-
 stome, and leaving another to gain it; and it was
 said, that a prescription to restrain one from using a
 Trade in such a place, is good. P. 18 Jac. betwixt
 Bragg and Tanner, Assumpsit for Ten Shillings,
 he promised to pay a Hundred pound, if he thence-
 forward kept any Drapers Shop in Newgate-Mar-
 ket; adjudged good, and the Plaintiff recovered,
 Croo. . part. 596. See case 115.

Ca. 208.

Promise
to pay
Forty
shillings
to arrest
one upon
an Out-
lawry.

Conside-
ration a-
gainst law

Bath brought an Action upon the Case against Salter, and declares, that the Defendant had prosecuted one Green to an Outlawry for Thirty pound, and had sued Cap. Utlagatum against him in Trinity Term; 18 Jac. directed to the Sherif of Salop: The Defendant promised to pay him Forty shillings: If he would arrest Green by Warrant of the Sherif, and sheweth that the Sherif made a Warrant, and he arrested him, and demands Forty shillings: And upon Non-Assumpsit pleaded, Verdict was found for the Plaintiff: It was moved in arrest of Judgement, that there was no Consideration, being against 23 H. 6. 10. for Extortion, which, vide M. 22 Jac. a Judgement for debt, by Crew, Chief Justice, and the three others, which is void by the Common Law, shall take no advantage of 29 Eliz. C. 4. for it seems this is not within this Statute, because it is not an extent of Extortion, but is void by Law, because the Sherif ought to do this de jure; and although the Plaintiff was not Baylis at that time, yet when he made the arrest, he was, and there is not any difference between the Baylis and the Sherif himself; and would be the way to bring in much Extortion. Dodridge. mutata opinione, held also, that the Action doth not lie, but he, and Jones held, that if the Plaintiff promised to one which is not Baylis, that if he will go to the Sherif, and mind him of the business, and procure him to make an arrest, the Action lieth, for he is not Baylis, and is for his labour; so if he will be present to assist the Sherif: But my Lord Crew, and afterwards Serjeant Crew, the Kings Serjeant, held all void, Bendl. 147.

Ca. 209.

Sir Arthur Gorge, and Sir Robert Lane. T. 21 Jac. In an Action upon the Case upon a promise,
in

in Consideration of Two thousand pound, with his Daughter to assure Land of Four thousand pound per annum ultra reprisas in Angl. such as Sir R. Crew, and Sir H. Yelverton should advise, and he pleads that he gave information of this Land, &c. Judgement for the Plaintiff, because it is not shewn of what estate, but saith of his freehold, and it may be an Estate. Also it is not shewn of what Land, nor where it lies, also there is not shewn the place where he informed them, Bendl. 125.

Hancock, Administrator of I. S. Plaintiff in an Action upon the Case, upon promise, that in Consideration that the Testator of the Plaintiff should melt the old Lead of a Church in Hampshire, and cover the Church with new Lead, that the Defendant would pay as much as it was worth: And alledgeth, that he had melted the old Lead, and at London, in the Parish of St. Mary, in the Ward of Cheap had covered the Church, and that it was worth Twenty pound, and alledges Administration to be committed at London, in the Parish, &c. And Verdict given for the Plaintiff, Goldsmith moved in arrest of Judgement. 1. Because the Plaintiff alledges, that at London the Testator had covered the Church, which is impossible, for it appears that the Church is in Hampshire; 7 Ed. 2, 33. Sir Maurice Dennis Case. A Lease for life was alledged to be made at Bath of Land in D, judged to be impossible; and therefore the Judgement was given against the Avowant. 10 El. D. 8, 270. Debt upon an Obligation with condition to perform Covenants, the issue was, If the Defendant suet verus possessor terræ in Com. Bedd. ought to be laid in Com. Bedf. for it is local.

Conside-
ration im-
possible.

Judgement for the Defendant, quod querens nil capiat per Billam, for the Plaintiff intitles himself to the Action, by a thing impossible, that a man at London did cover a House in Hampshire, and this may be traversed, and cannot be tryed at London. But for the other point the Court was clear, that the Bishop &c. out of his Diocess may grant Administration of things arising in his Diocess, for some times in Parliament time, they are all out of their Diocesses, Bendl. 229.

Ca. 211. Harwood and Wells. M. 1 Car. 1. In Error upon a Judgement in Ba. in an Action upon the Case, upon a promise, the Declaration was, that in Consideration that the Plaintiff would assure to the Defendant a House in Titbury, as by Counsel should be advised; the Defendant 8 April. 21 Jac. promised to pay Thirty pound in manner following, viz. Five shillings in hand, Nine pound fifteen shillings at Midsummer, Ten pound at Michaelmas. And the Original Writ was dated 18 Sept. which was before Michaelmas, which was so certified, and Judgement reversed, because it cannot be sued before the day, and the damages were intire, Bendl. 158.

Ca. 212. Jackson brought an Action upon the Case upon a promise to pay money to the Testator of the Plaintiff, and upon Non Assumpsit, the Verdict was found for the Plaintiff, and it was moved in arrest of Judgement. 1. Because there was not any request laid by the Plaintiff, and this ought to be in the detinet, and is not detention before demand. 2. He doth not say, that the Money was delivered to the Defendant to the use of the Testator; for if it were to the use of another, he cannot countermand it, the Judgement is good. 1. Because it is debt, and not a thing Collateral. 2. It shall be intended

For a
house, to
be assured
to pay
money.
Suit for a
debt be-
fore it be
due.

By an Ex-
ecutor.

Request.

tended so, saying the contrary is not shown, Bendl. 172.

Hungerford and Haveland. T. 2 Car. 1. In an Action upon the Case the Plaintiff declares, quod cum infra Manerium de D. talis habeatur consuetudo quod super quamlibet alienationem lee vendee consuevit solvere Domino redditum unius anni nomine Relief. Et cum quidam Tho. Smith, &c. in feodo, &c. Et eadem tenimenta tenuit de quereute ut de Manerio præd. per fidelitatem. & 5 s. redditum & relevium cum accideret secundum consuetudinem: And the said Smith sold the premises to the Defendant, whereby five shillings was due to the Plaintiff for relief, the Defendant assumes to the Plaintiff, that if he would forbear to sue the Defendant for the said relief, and the Plaintiff could make it appear to A. B. the Brothers of the Defendant, that the said relief is due unto the Plaintiff, then the Defendant would pay it, &c. Et licet querens fecit appear to the said A. & B. per ostens. Rotulorum & Record. Cur. Manerii præd. that the said relief was due to him, yet the Defendant hath not paid it &c. and because the Defendant nihil in Barram, &c. Judgement was given against him in B. C. and affirmed in a Writ of Error, Bendl. 181. See cases 39, 181.

Risley and Harnes. H. 2 Car. 1. brought an Action upon promise, and declares of divers Contracts, and alledges particular sums, in toto se attingunt ad forty five pound, and concludes to the damage of Fifty pound, and upon Non Assumpsit Verdict was found for the Plaintiff: Andrews moved in Arrest of Judgement, that the sums were misstated. The Court thought it good, for it was the fault of the Clerk, and had been good, without que in toto se attingunt, Bendl. 201.

Ca. 213.

Consideration, forbearance to sue for a relief, and make it appear it is due.

Promise to pay it,

Ca. 214.

Miscourt, ing: 15. 30

Ca. 215.

Promise
of money
upon a
marriage
at several
dayes.

Damages
entire.

Tho. Josselin, Knight, brought an Action upon the Case against John Shelton, Knight, and declares, that the said Defendant, for Consideration of Marriage made between the Son of the Plaintiff, and the Daughter of the Defendant: The Defendant promised to the Plaintiff, to pay him Four hundred marks, to be paid to him in Seven years then next ensuing, scil. at certain Feasts by equal portions annually, and for that these Four hundred marks were not paid, he brings this Action, and the Defendant pleads Non-Asumpsit, and upon this they were at Issue, and it was found for the Defendant in B. C. in damages, &c. And now in Arrest of Judgement, the Defendant shews by his Council, that it appears by the Declaration, that one year of the Seven was to come, when the Plaintiff purchased his said Writ, so that the Plaintiff had no cause of Action, wherefore the Court abated the Writ for this onely Cause after Verdict, Bendl. 3.

Ca. 216.

Consideration, delivery of beasts taken damage-feasant.

Promise to satisfy for the Trespass;

Ca. 217.

Harwin. P. 19 Jac. The Plaintiff took the Beasts of the Defendant damage-feasant, &c. the Defendant assumes to the Plaintiff, that if he would deliver to him the Beasts, quod ipse bene & fideliter querenti satisfacere vellet pro transgressione, the Beasts were delivered, and the Defendant never satisfied for the Trespass, &c. quare whether good for that the value of the Trespass is not shewn, Bendl. 90.

Senior and Wolmer. T. 21 Jac. In an Action upon the Case upon a promise reciprocal, and shews that the Servant had power to agree for his Master, and in Consideration that the Servant promised that his Master should forbear Suit, &c. and note that the Master afterwards agreed to the Contract.

and

and promise of the Servant, exception was taken in Arrest of Judgement: But the Judgement was, that it was a good promise, Dodridge, The Act of the Servant shall bind the Master in many Cases. A Baylis buys or sells Cattle, this is the Contract of the Master, and so of an Apprentice: But if an Apprentice sells and warrants Cloths, &c. the Warranty binds not the Masters Agreement after in some Cases, relates ab initio, as an Agreement to a dissection will avoid a Lease, Bendl 132.

Consideration, Servant promised his master should forbear suit. Promise to pay money. Act of Servant bind the master.

Neckold and Peck. M. 1 Car. 1. In Error of a Judgement given in an Action upon the Case upon a promise, if the Plaintiff in the first Action would pay fifty four pound to I. S. that then upon request the Defendant would deliver an Obligation which was made for payment of it to the Plaintiff; And in an Action upon the Case upon this promise, the Plaintiff did not alledge time or place of the request, but sepius requisitus. Serjeant Hitcham moved, that it is Error, for it is part of the Consideration, and no Issue can be joyned on sepius requisitus. Jones and Whitlock, Justices, thought it good, because the Defendant pleads Non-Assumpsit, otherwise if he had demurred, or pleaded in fact, and relied thereon. Crew and Doderidge thought the contrary, and it was adjourned to see Presidents to make a leading Case, Bendl. 157.

Ca. 218.

Promise, upon payment of the money, to deliver up the obligation.

Request.

Pleading.

Dartnall and Morgan. M. 18 Jac. B. R. Assumpsit, whereas the Plaintiff Locasset to the Defendant a Ware-house in the Parish of St. Dunstons in the East, that the Defendant assumed to pay unto him for every week that he occupied it Eight Shillings; and alleges in fact, that he occupied it Eighty seven weeks; for which, upon not paying upon request, the Action was brought: The Defendant

Ca. 219.

Promise for a house, to pay a Rent

Action for
a Rent.

Promise
to pay
Rent as
long as he
enjoyed.

pleads Non-Assumpfit, and found for the Plaintiff; and it was moved in arrest of Judgement, that this is a Lease (at least at Will) of the said Ware-house, and that the Eight Shillings weekly is in nature of Rent, and for Rent reserved upon a Lease (which sounds in the realty) an Assumpfit lies not, nor for a debt upon specialty, or upon Record: And here, for as much as this is not a Lease, but a promise, that as long as he permitted him to occupy the Ware-house, he would pay it; it is not only Rent, but merely a promise, in Consideration of the occupying, &c. wherefore this Action is well laid; and it was adjudged for the Plaintiff, Croo. 2. part 598.

Ca. 220.

In simul
computa-
verunt.

Against
an Execu-
tor.

In Consi-
deration
that there
is a Lega-
cy due, he
promiseth
to pay it.

Bard and Bard. M. 18 Jac. B. R. Assumpfit, when as they In simul computaverunt, concerning the arrearages of such Rent issuing out of the Defendants Land, and about payment of a Legacy of Fifty pound due unto the Plaintiff by his Fathers devise; and it was found that Three hundred pound was due unto him: That the Defendant, in Consideration thereof, promised to pay it at such a day: The Defendant pleaded Non-Assumpfit, and found against him; and it was moved in Arrest of Judgement, that it doth not appear here, that the Defendant was Executor, or was chargeable with the payment of this Legacy, nor that he had Assets to pay it, nor how he was chargeable to the payment of this Rent; therefore there is not any Consideration for this promise; so no cause of Action; sed non allocatur, for it shall be intended he was chargeable, otherwise he would not have made any such promise, and they accounting together, and he promising to pay, was a sufficient cause of his Action; wherefore it was adjudged for the Plaintiff.

Bathe

Bathe and Crampton. P. 19 Jac. B. R. Assump. Ca. 221.
 fit, whereas a Legacy of Forty pound was devised to the Plaintiff by I. S. who made the Defendant his Executor, and that divers goods came to the Defendants hands, and the Plaintiff intended to sue him for that Legacy; that the Defendant, in Consideration the Plaintiff would forbear his Suit, at such a time promised to pay, &c. Upon Non-Assumpst pleaded, and found for the Plaintiff; it was moved in Arrest of Judgement, that the Declaration was not good, because he doth not aver, that he had Assets at the time of the promise, sed non allocatur, for it shall be intended he had, otherwise he would not have made such a promise; wherefore it was adjudged for the Plaintiff, Croo. 2. part 613.

Potter and Phillips. M. 19 Jac. P. R. Assumpst. Ca. 222.
 2 July. 1620. In Consideration that the Plaintiff would lend unto him Seven pound ten shillings, and would accept a Bond of Sir George Mannors of Eighty pound, and a Letter of Attorney to sue it, and would promise to release unto the Defendant all Actions and Demands; the Defendant assumed, that if the Plaintiff could not recover from the said Sir George Mannors Forty pound within such a time, he would pay that Forty pound unto him upon request; and allegeth in fact the lending unto him the Seven pound ten shillings, and the acceptance of the Bond of Forty pound, and the Letter of Attorney, and that he, according to his promise, postea the same day and year released unto the Defendant all Actions and demands, and that the Defendant had not according to his promise (although he could not receive from Sir George Mannors, within the said time, &c. & licet requisitus) paid unto him the Forty pound; The De-

Consideration, to forbear to sue for a Legacy. Promise to pay it.

Consideration, loan of money, acceptance of a Bond, and Letter of Attorney, to recover a debt from another, and to discharge the debt. Promise, if he pay not the debt assigned, to pay it.

Release. Defendant pleaded Non-Assumpsit, and found against him; and now moved in arrest of Judgement, that the Plaintiff by this release (which he himself hath shewn, that he made the same day after the promise of releasing all Actions and Demands) hath extinguished this Action; and therefore by his own shewing hath no cause of Action: But all the Court held the Action to be well maintainable; for this Release is part of the Consideration, and the cause which gives him this Action, and without making thereof, he could not maintain this Action: And although the Release is general of all Actions and Demands, yet that doth not discharge what is future, and whereof he hath not any Cause of Action at the time of the Release made; wherefore it was adjudged for the Plaintiff, Croo. 2. part 623. See cases 186, 150, 29, 33, 95.

Ca. 224. Jo. Mayor, and Rich. Harre. M. 20 Jac. B. R. Assumpsit, for that the Defendant was indebted unto him in Forty pound, & sic indebitatus existens, in consideratione inde assumpsit solvere, upon request, &c. After Non-Assumpsit pleades, and found for the Plaintiff, it was moved in arrest of Judgement, that the Declaration was not good; for that he doth not shew for what cause he was indebted, so as the Defendant doth not know how to provide him an answer. And it is not a promise, in Consideration of forbearance till such a day, or such a special promise, for that might be good; and to that purpose was cited M. 6 Jac. betwixt Buckingham and Cordes, that for this cause Judgement was reversed. And of that opinion were all the Court, viz. Doderidge, Houghton, and Chamberlain (absente Lea) and gave rule, that Judgement should be entered for the Defendant, Croo. 2 part 642.

Arundel

Upon an Indebitatus of a former debt.

Pleading.

Consideration.

Arundel and Gardner. M. 20 Jac. B. R. Assumpsit, Ca. 225.
 Whereas the Defendant had a fieri facias, for Sixty
 the pound of the goods of Jo. Laver, and delivered Consideration,
 that the Writ to the Sheriffs of Norwich, to whom it that the Sherif
 was directed to execute, and affirmed to the Plain- should
 if, that the Wollen Cloth in the Shop of Chri- take such
 stopher Laver, were the Wares of Jo. Laver, and goods in
 liable to execution for the said sum, and required execution
 him to execute it; That the Defendant ad tunc & Promise
 ibidem, in Consideration that he would seize the to save
 said Cloth for the said execution, assumed to the him
 Plaintiff, that he would enter Bond to the Sheriffs harmless.
 of Norwich, when he should be required in any rea-
 sonable sum, to save them and the Plaintiff harm-
 less against all persons for entering into the said
 Shop, and taking Execution of the said goods; and
 allegeth, that he giving evidence to that promise, Assumpsit
 entered into the said Shop, and took Execution of against
 the said goods; and for this cause Christopher Laver Law.
 sued him in Trespass, and recovered Seventeen
 pound in damages and costs; and that the Defen-
 dant licet sepius requisitus, had not entered into any
 Bond to the said Sheriffs, &c. Upon Non Assump-
 sit pleaded, and found for the Plaintiff, it was mo-
 ved in arrest of Judgement: First, that this promise Promise
 upon this Consideration is against Law, to take incertain,
 Execution of Goods, which were not the Defen-
 dants, and to save him harmless against all persons;
 and therefore it is not good. 2 H. 4. sed non allocat-
 ur; for he, having the Goods, and requiring the
 Sherif to do Execution, it is reasonable that he
 should save them harmless, and a promise to that
 purpose is good enough. A second Exception was,
 that this promise is uncertain to give Bond in a
 reasonable penalty, and it is not agreed what it
 should

33.

life
 money
 onfi-
 tion
 harri-

ding,

ial
 ce to
 own.

Request.

should be, and therefore void. Thirdly, because it is licet sapius requisitus, he hath not entered into bond and he doth not shew by whom the request was made. Fourthly, because he doth not shew that he tendered a bond unto him; for he being to enter into bond upon request, he who would have the bond ought to make it ready, and to require it, &c. *Secundum non allocatur*; But Judgement was given for the Plaintiff, Croo. 2. part 652.

Ca. 226.

Against
Executors

Promise,
by the
Testator,
to deliver
a Bond.

Where an
Executor
is bound
by the
promise
of the
Testator.

Fawcett and Charter. H. 20. Jac. B. R. Error in the Exchequer Chamber, of a Judgement in the Kings Bench, in Assumpsit against Executors, of a promise of their Testator, viz. that he should deliver such a bond, delivered for such a thing; and because the Testator did not re-deliver the said bond, the Action was brought against the Executors. And after Verdict and Judgement for the Plaintiff, Error was now assigned, that this being a mere Collateral promise made by the Testator, and broken by him, there lies not any Action against the Executors. And of that opinion was Tanfield, Chief Baron, who said, he knew it had been often so adjudged; and the difference is, between a promise to do a Collateral Act, and where it is a promise to pay a sum of Money, which is a duty certain by the Testator, for the not doing whereof, an Action lieth against the Executors: But a Collateral promise is not any duty, nor performable by the Executors; and therefore an Action lies not against the Executors for the non-performance thereof. But the Lord Hobart, and all the other Justices of the Common Bench, and Barons of the Exchequer, held, that there is not any difference betwixt the Cases, but in either of them the Action is maintainable against the Executors, upon a promise of their

their Testator: And so it hath been often adjudged in this Kings time. But they said, true it is, that such an opinion was conceived in the time of Queen Elizabeth, and divers Judgements reversed for this Cause: But now of late the opinion of both Courts are reconciled, and resolved, that the Action lies against the Executor, as well in the one case, as in the other; wherefore the Judgement was affirmed against the opinion of Tanfield And here in the first day, when the Debate was, Jones was absent: And it was much argued, whether this Judgement should be affirmed or reversed, because the opinion of Five of them was against it, and Tanfield and Winch for it, who said, that by the precise words of the Statute, there ought to be six agreeing to affirm, or reverse a Judgement; but this question they resolved not; for Jones came and agreed with the Five, whereupon the Judgement was affirmed, Croo. 2. part 662. See cases 73, 236, 241.

Martin and David Boure. P. 1 Jac. B. R. Assumpsit, whereas Nicholas Salter was indebted to Alexander Harris, being at Aleppo in Spain, in Two hundred eighty three pound six shillings eight pence, amounting unto One thousand three hundred twenty five Dollars, called Royals of Eight, Monete, Hispania; and Alexander Harris agreed with the Defendant, that Nicholas Salter should pay unto him that Two hundred eighty three pound six shillings eight pence in England, and that the Defendant should pay unto him the value of that Money at Aleppo in Spain, and thereupon deliver to the Defendant a Bill of Exchange, requiring N. S. to pay that Money accordingly, in Consideration that the Plaintiff, at the Defendants request, would

Contract between Merchants.

delivered that Bill to the said N. S. and receive of him the said Two hundred eighty three pound six shillings eight pence; and in Consideration that the Plaintiff would deliver to the said N. S. a Bill of Exchange signed with his hand, secundum usum Mercator. requiring the Defendant to pay to the said I. S. the value of that Two hundred eighty three pound six shillings eight pence, in Spanish Money at Aleppo: And in Consideration that the Plaintiff would assume to the said N. S. that the Defendant should pay to the said A. H. the value of the said Two hundred eighty three pound six shillings eight pence in Spanish Money in Aleppo, according to the said Bill, the Defendant assumed that he would pay to the said A. H. the value of the said Two hundred eighty three pound six shillings eight pence in Spanish Money at Aleppo, pro ut, by the said Bill of Exchange by the Plaintiff to be made, should be appointed, and alleged in fact, that he delivered to the said N. S. the said Bill of A. H. and received from him Two hundred eighty three pound six shillings eight pence to the Defendants use, and delivered unto him a Bill signed with his hand, directed to the Defendant, requesting him to pay the said A. H. at Aleppo One thousand three hundred twenty six Dollars, called Royals of 8 Moneta Hispania, and that the Defendant assumed to the said N. S. that he, the Defendant, would pay to the said A. H. the said One thousand three hundred twenty six Dollars, called Royals of Eight, Moneta Hispania, according to the said Bill: And that the Defendant had not paid them, &c. The Defendant pleaded Non-Assumpsit, and it was found against him, to the Plaintiffs damage of Three hundred pound, and Judgement accordingly.

and

and Error thereof brought in the Exchequer-chamber, and assigned.

First, because the Considerations are executory, which ought to be precisely alledged to be performed according to the agreement, and they are not performed according to the agreement.

First, because he ought to have given a Bill of Exchange, signed with his hand, secundum usum Mercator. and if it be not so, he is not bound to pay it, because it varies from his agreement.

Secondly, because his Assumpsit is, that if he gives his Bill, directed to the Defendant, to pay the value of Two hundred eighty three pound six Shillings eight pence in Spanish Money, &c. and assume that the Defendant shall pay that value of Two hundred eighty three pound six Shillings eight pence in Spanish Money, &c. That he will pay it: And he doth not pursue this agreement; for he gives his Bill to pay One thousand three hundred twenty six Dollars, called Royals of eight, which is not according to the agreement; for he thereby ties himself to pay that kind of Money, and not generally, the value of Two hundred eighty three pound six Shillings eight pence, and so it varies from the agreement, which he is not bound to perform; as if the promise had been, that if he gave his Bill, that I shall pay the value of a Hundred pound in English Money, I will pay, &c. And he gives his Bill that I shall pay the Hundred pound in Spur-Royals, I am not bound to perform it; for where I have election to pay it in any Money, he ties me to pay it in that kind of Money only, so as he takes from me my election in what Money I will pay it, and makes me peradventure to be at the charge of exchangeing it into that Money, sed non allocatur,
be-

because it is averred, that One thousand three hundred twenty six Dollars, &c. to be of the value of Two hundred eighty three pound six Shillings eight pence; therefore it is all one, and shall not be intended that the payment of them in other Money should be prejudicial unto him; wherefore without hearing any argument, or greater deliberation, the Judgement was affirmed, Croo. 2. part 7. Martin and Boore. Pasche. 44 Eliz. Exchequer-Chamber. Note these Exceptions were not moved in the Kings-Bench.

100 228

Staynrode and Locock. P. 4 Jac. B. R. Assumpsit; for that the Defendant, in Consideration of such a sum paid unto him, assumed to assure such Coppyhold Lands to the Plaintiff in such manner as one Drables should advise; and alledges in fact, that Drables advised, that he should make a surrender of that Land at the next Court of the Manor, to the use of the Plaintiff, and his Heirs, and should enter into an Obligation of Forty pound, for the enjoying of that Land against all persons; and alledgeth the breach, for not making that surrender, and for not becoming obliged according to the said Order; the Defendant pleaded Non-Assumpsit, and found against him; and it was now moved in arrest of Judgement, that this breach in not entering into the Obligation, was ill: And then damages being given as well for that, as for the other, no Judgement may be entered; and of that opinion was the whole Court; for the Order which Drables made, that the Defendant should make an Obligation of Forty pound, is out of the Assumpsit; and therefore the other is not bound to perform it: And the breach being assigned in Two things, whereof the one is not any cause of the breach of the

the Assumpsit, the damages being given entirely; are intended to be given as well for the one, as for the other, therefore ill; wherefore Judgement was given for the Defendant. Croo. 2. part. 115. and Noy. 124.

Gregory and Wilkes. P. 4 Jac. B. R. Assumpsit, whereas the Defendant was indebted to the Plaintiff in Fifteen pound, that the Defendant promised to pay it by Five and twenty Billings the quarter, and to enter into bond upon request for the payment of those sums; and alledgeth, that request was made for payment thereof, which request was made after the end of the Quarter, after the promise: After Verdict for the Plaintiff, it was moved in Arrest of Judgement, that this request to enter into bond of Thirty pound, and refusal thereof, was not any breach, for there is not any promise to enter into bond in any sum certain, sed non allegatum, for the Assumpsit being to enter into bond, no sum being mentioned: It is intended a bond of the double sum, which is the usual course betwixt parties, and after the common intention; wherefore it is good enough. Secondly, because the Request is after a Quarter past, which is not sufficient, being after the day of payment: for if there should be a bond for the payment at a day past, it should be a forfeiture presently; wherefore for this cause it was adjudged for the Defendant, Croo. 2. part. 116.

Woodford and Deacon. P. 6 Jac. B. R. Error in the Exchequer Chamber of a Judgement in B. R. The Error assigned, because the Plaintiff in an Assumpsit declares, that the Defendant being indebted unto him, assumed to pay, &c. and hath not shewn for what cause the debt grew, viz. for Rent, or

Ca. 229.

Consideration, that he owes such a sum. Promise to pay it quarterly, and to enter into bond to pay it.

Certainty.

Ca. 230.

Indebitatus Assumpsit, not shewing the cause of the debt.

by Specialty, or by Record: And if by any of those means, a general Assumpsit lies not; and for this cause all the Judges and Barons held it to be Error: But if it had been, that he bring indebted for divers wares sold, or for such like contract, assumed to pay, &c. It had been good enough for the generality thereof; and because a Recovery in this Action should be a Bar of such a debt; therefore for this reason it was reversed; although it was objected, that there be many Presidents of such Actions in the Kings Bench. The like Judgement was given between Fayreclough and Seed. And M. 6 Jac. between Buckingham and Costerden. Croo. 2. part 206, and 213. See Cases 6, 11.

Cr. 231. Belcher and his Wife, and Hudson. T. 7 Jac. B. R. Assumpsit, for that the Defendant assumed to the Feme of the Plaintiff in her Widow-hood, that if she would marry Tho. Mason, he would pay unto her annually after the death of the said Mason, during her life Forty shillings; and alleges in fact, that she married Tho. Mason, and after his death married the Plaintiff, and for non-payment of Forty shillings annually after his death, brought the Action: The Defendant pleads a Release from Tho. Mason, of all Actions and Demands which he had, or, &c. And it was thereupon demurred, and after Argument at the Bar, adjudged to be no Plea, for being a promise to perform a payment after the death of Tho. Mason. it was not in demand during his life, nor by any possibility could ever be demanded by him; wherefore, &c. Croo. 2. part 222. See the like Case, Case 134.

Ca. 232. Bradford and Buckingham H. 5 Jac. B. R. Error of a Judgement in an Assumpsit by Baron and Feme; during the Coverture, in Consideration she would

would cure such a wound, that he would pay unto her Ten pound, and alledges in fact, that she had cured the wound, and he had not paid, to the damage of the Baron and Feme: And it was assigned for Error, that the Baron should have had the Action; for being a promise during the Coverture, the non-performance is onely damage to the Baron, and not to the Feme: But for that the Cause and Act is arising onely from the labour and skill of the Feme, therefore the Action is well brought; and the Judgement was affirmed, Croo. 2. part 205.

By Husband and Wife.
For the cure of a wound by the Wife, during the Coverture.

Bradley and Toder. M. 7 Jac. B. R. Assumpsit, Ca. 233. in Consideration he would marry such a one his Cousen, that he would give him a Hundred pound, and alledges in fact, that he married her such a day and place; and although he requested the Defendant such a day and place to pay, yet he had not paid: Upon Non-Assumpsit pleaded, and found for the Plaintiff, it was moved in arrest of Judgement, that the Declaration was not good, because it is not alledged, that he gave Notice of his Marriage: And of that opinion, upon the first motion, was the whole Court; for a precise Notice of the Marriage ought to be given: And although it is alledged, that he married the Feme, and afterwards at such a day requested the Money (which implies the Notice alledged) yet it is not good in a Declaration, which ought to be certain, and is not to be maintained by intendment: But afterwards being moved again upon a President shewn, between Morley and Hodges, in the Exchequer Chamber, where in this Court, in the like Action verbatim (and no notice alledged) Judgement was affirmed; the Court resolved, that it was good enough; for it is a necessary intendment, That when after Marri-

Promise of money in Consideration of Marriage.

Pleading.

Special Notice to be shewn.

age he requested the payment of the Money, that notice was given of the Marriage; wherefore it was adjudged for the Plaintiff, Croo. 2. part 228.

Cr. 234.

Sur Indebitatus.
Promise to pay before his next Journey to London.

Richard Rook and Nicholas Rook. T. 8 Jac. B. R. Assumpsit, whereas the Defendant, 10 Febr. 7 Jac. in Consideration he was indebted to the Plaintiff in Forty pound, viz. per diversis denariis summis ei prestitis, ac pro diversis — de eodem Richardo receptis & habitis, & pro quadam pecunie summa, by the Plaintiff at the Defendants request, to one Jo. Amias solut. for diet, assumed to the Plaintiff, that he would pay the said Forty pound unto him, ante inceptiorem proximi itineris of the Plaintiff to London, and alledges in fact, that he upon the 23 of February following inceptit iter suum ad London, and came thither the 29 of the same

Request.

Pleading.

month; yet the Defendant had not paid him the said Forty pound, licet sæpius requisitus; After Non-Assumpsit pleaded, and Verdict for the Plaintiff, it was moved in arrest of Judgement, that the Declaration was not good, First, because it is not shewn how much he was indebted for every of the Causes, and so it is too general, sed non allocatur; for it is not material, being that he was indebted so much in toto, he needed not to shew every particular. Secondly, because he doth not shew that it was his proximum iter to London; for otherwise there is no cause of Action for the non-payment before the Journey. And although it was alledged, that it should be so intended, being in so short a time after the bargain, and no other being shewn; yet the Court held, it was a material Exception, for the Duty grew upon the Commencement of his next Journey; and therefore he ought to shew it, to enable himself to the Action, as if the

the promise had been, to pay such a sum to him who first comes to Pauls; wherefore for this cause the Declaration was held to be ill, and adjudged for the Defendant. Croo. 2, 245.

Tolhurst and Brickenden. M. 8 Jac. B. R. Assumpfit, whereas he was in Communication with the Defendant to buy two fat Oxen, and promised to pay for them infra breve tempus. Seventeen pound, that the Defendant thereupon assumed to deliver them unto him, and shews, that within Fourteen dayes he paid Nine pound, and was ready to have paid the residue; and that the Defendant delivered unto him one of the Oxen, but would not deliver the other, &c. Upon Non-Assumpfit pleaded, and found for the Plaintiff; it was moved in arrest of Judgement, that the promise to pay infra breves tempus, is uncertain, and is not any Consideration at all, and the other thereupon is not bound to keep his Oxen for him, but may sell them to any other; and although he offered to pay within Fourteen dayes, that is not material: And of that opinion was all the Court, for breve tempus, is uncertain, & non constat what time it is: And if there be any certainty, it ought to be such a time onely, as he might have, and fetch his Money; and the other is not bound to attend him any longer time; wherefore the Declaration that he returned within Fourteen dayes, and tendered the Money, is not material, whereupon it was adjudged for the Defendant. Croo. 2, past 250.

Bond and Paine, and his Wife. P. 9 Jac. B. R. Assumpfit, whereas one B. was indebted unto him in Threescore pound, which he had lent to the said B. and being so indebted, made the Feme his Executrix, and intreated her to pay that debt, and shews, that

Confid-
ration of
the buy-
ing of
Oxen, and
promise
to pay for
them.
Promise
to deliver
them in a
short time
Incertain-
ty.

Ca. 236.

Against
an Execu-
trix.

Conside-
ration, to
forbear
the debt
of the Te-
stator, till
such a
time.
Promise
to pay it:

that she proved the Will, & prætenu Testament:
prædicti suit possessionatar. of a Lease for years of
such a house: And, in Consideration that the Plain-
tif should not sue nor molest her (being Executrix)
for this Money, and would give unto her a Quarters
day, viz. until Michaelmas next following, she pro-
mised to pay it, &c. Upon Non-Assumpsit pleaded,
and found for the Plaintiff; it was moved in arrest
of Judgement, that the Action lay not against the
Executrix; for the debt being upon a Contract, and
no special promise, no Action lies against the Exe-
cutrix. Also it is not averred, that she had Assets,
in her hands; and there is not any cause of Consi-
deration to make that promise; and although it be
alleged, that she was possessed of that Term præ-
textu Testament. yet it doth not thereupon follow,
that she had Assets, for she might have it in satisfac-
tion of debts which she had paid; or is chargeable
for debts upon specialty, more than that comes to.
But notwithstanding, without much argument it
was adjudged for the Plaintiff; for the Loan im-
plies a promise, and the Executrix is chargeable
therewith; and this Action is grounded upon her
promise; and being alleged that she had the
Term, it shall be intended she had it as Assets; and
his forbearance of Suit, and her having of Assets,
are the Causes of this Action; wherefore it was
adjudged for the Plaintiff, Croo. 2. part 273. See
case 225.

Ca. 237.

Somerfall and Barneby. M. 9 Jac. B. R. Assump-
sit, whereas Communication was betwixt the
Plaintiff and Defendant, for and concerning credit
to be obtained and given for Charles Fox; that the
Defendant, in Consideration of the premises, and
in Consideration that the Plaintiff would be obliged
for

for the said Charles, in such sums of Money, and to such persons, as the said Charles should desire of the Plaintiff, assumed, that he would discharge and save harmless the Plaintiff, of and concerning all such sums of Money, and all such debts as he should become bound to any person, as surety for his said Son, and alledgeth in fact, that he, at the request of his Son, 14 Novemb. Jac. at such a place became obliged, as Surety for the said Charles for his debt, to one Robert Clark in Two hundred forty pound, with condition for the delivery of Twenty Fodders of Lead, upon the Twentieth day of May following; the which Twenty Fodders of Lead, no part thereof the said Charles did not deliver; whereupon the bond was forfeited, and he compelled to pay the said Two hundred forty pound for the debt of the said Charles, to the said Robert Clark; The Defendant pleaded Non-Assumpsit, and found against him, to his damages of Two hundred and fifty pound, and now moved in arrest of Judgment;

First, because it is alledged, that he was obliged at the request of the said Son, and doth not shew the day, nor place where the Son requested; sed non allocatur.

Secondly, It is alledged that he was obliged with a Condition to deliver Twenty Fodders of Lead, which is not a debt of the Son, but for a Collateral Matter, which is not within that promise, no more than if he had been obliged to assure Land of his Fathers.

Thirdly, It is assigned, that he entred into bond with the Son to deliver Lead, but it is not expressed to whom the Lead should be delivered, sed non allocatur, for it shall be intended to be to him to whom the bonds was made.

Consideration, to engage for my friend, promise to save me harmless.

Notice to
be given.

Fourthly, Because it is not alledged, that he gave notice unto the Defendant of that bond, nor requested him to save him harmless from it; and the Defendant is a stranger thereto, and doth not know in what bonds the Plaintiff is obliged with his said Son; and being a future thing to be entered into by the Plaintiff, the Defendant, being a stranger, ought to have notice thereof from him: But if it had been, to save him harmless from bonds formerly entered into, it had been otherwise; for thereby intendment, the Defendant had as well consulted of them, as the Plaintiff, sed non allocator; for the Court said, it was all one, and that he, at his peril, ought to take notice thereof.

Fifthly, Because it is not alledged, that he was compelled to pay Two hundred forty pound, per debitum Legis formam, nor to show how; sed non allocator, for it is not material to be shewn; whereas it was adjudged for the Plaintiff, Croc. 2. part 287. See cases 48, 170.

Ca. 239.

Statutes
delivered
to satisfy
a debt.

Promise,
upon re-
delivery
of them,
to pay the
Money.

Mallory and Lane. P. 11 Jac. B. R. Error in the Exchequer Chamber of a Judgement given in B. R. in an Assumpsit; for that whereas the Father of the Defendant Mallory being indebted unto him, the said Lane in Two hundred pound, did deliver to the said Lane Two Statutes of Sir Jo. Wentworth of Four hundred pound; and promised to make unto him an Assignment, and Letter of Attorney to recover and receive the said debts upon the said Statutes, and dyed before any Assignment, the Defendant pretending himself to be Executor unto his Father, requested the Plaintiff Lane to deliver unto him the said Statutes; and in Consideration that he would deliver them, promised to pay unto him Two hundred pound at such a day; and that

upon his promise he delivered unto him the Statutes, and that he had not paid, &c. Upon this Mallory the Defendant in B. R. pleades Non Assumpfit, and found against him, and Judgement accordingly: And now it was assigned for Error, that it was not a sufficient Consideration to ground an Action; for the Plaintiff hath no interest in the Statute, and the re-delivery of them unto the Defendant, is no more than the delivery of such things as belong unto him, if he be Executor: But it is here alledged, that the Defendant Mallory pretending himself to be Executor; so he doth not shew that he is Executor, and then he hath no benefit by the delivery of them unto him, sed non allocatur, for all the Justices and Barons held it to be a good Consideration, for when Lane had the Statutes delivered unto him lawfully, although he had no Assigment of them, so as he might sue them; yet he might retain them: And therefore this re-delivery of them unto the Defendant Mallory without Suit, is a sufficient Consideration: Also they held, although the Defendant Mallory is not Heir to be Executor, but pretend himself to be Executor, yet obtaining the Statutes into his hand upon this Consideration, it is a sufficient ground for the Action against him; wherefore the Judgement was affirmed, Croo. 2. part. 342.

Consideration not valuable.

Against an Executor.

Shepherd and Edwards. P. 13 Jac. B. R. Assumpfit, in Error of a Judgement in Exon, before the Mayor and Bayliffs there; the Error assigned, because that Edwards the Plaintiff declared, that he being a Professor of Physick, and Chirurgery, and so having been for divers years: And the Defendant being troubled with a disease, called a Ficulz, and in danger of his life by reason of that disease;

Ca. 240.

Promise to pay for advise in Physick as much as it should deserve.

disease; the Defendant the 26 Martii, 1603. In Consideration that the Plaintiff would with his best skill apply wholesome medicines for the curing the Defendant of his disease, nec non operam & concilium suum daret & impenderet to the said Defendant in ea parte, assumed, and promised to pay unto him upon Request, such a sum of Money, as the Plaintiff for his labour and Counsel in & circa curationem morbi prædicti mereret: And alledges in fact, that the Plaintiff the said 26 Martii, 1603. & diversis aliisque diebus & vicibus, betwixt the said 26 of March, and the last of February following, according to his best skill, caused to be applied divers medicines for cure of the said disease, nec non operam & concilium suum per idem tempus in ea parte dedit to the Defendant, and that the Defendant, as well by the means of the said Medicines, as by the labour and counsel of the Plaintiff, was by the said last of Febr. 1603. well cured of the said disease, and made whole. And he saith in fact, that he well deserved a Hundred pound for his labour and counsel bestowed upon curing the said disease: And that the Defendant, although he had been required, had not paid the said Hundred pound, or any part thereof: The Defendant pleaded Non-Assumpsit, and found against him; and thereupon the Plaintiff had Judgement, although it were objected, that quantum mereret was insufficient and uncertain, Croo. 2, part 370.

George Thorne and Jo. Fuller. P. 14 Jac. B. R. Error in an Assumpsit, whereas Tho. Fuller the Defendants Brother, was indebted unto him Thirty two pound, which being not paid, he for the recovery of the said debt, extra Curiam Domini Regis ad placita coram ipso Rege tenend. assignat.

procured an alias capias to arrest him returnable quinden Hillarii to answer him in placito prædicto : And that he delivered the Writ to the Sheriff of Buck. who by virtue thereof 24 Jan. the same year arrested him : That the Defendant postea, scilicet, 12 April 12 Jac. in Consideration that the Plaintiff at the Defendants request, ad tunc & ibidem would assent, and be contented to desist from further prosecution of the said suit, against the said Tho. Fuller so begun, and would remit unto him his costs, the said Jo. Fuller assumed to pay that sum at the Feast of St. Michael, or then to give him security to pay the said debt unto him at the end of six months ; and alledged in fact, that he did forbear to prosecute, and that he had not paid it, nor given him any security : After Verdict and judgement given for the Plaintiff, and now Error brought.

Consideration of forbearance of a debt, promise to pay, and to secure it.

Pleading

The first Error assigned, was, because he doth not alledge how, and in what manner he became indebted, sed non allocatur, for although it be true (as all the Justices here agreed) that an Assumpsit lies not upon a general allegation against the party, quod indebitatus Assumpsit, without shewing how he was indebted, viz. for Ware sold, or Money lent, or such good cause ; yet for as much as the debt is here collaterally due by another, and the Consideration is the Paying of the Suit after the Arrest, it is good enough.

The second Error, because it is alledged, that he prosecutus fuit extra Curiam Domini Regis ad placita, &c. where (as was alledged) there was not any such Court by that Addition ; but it ought.

Consideration not valuable,

Conside-
ration not
valuable.

ought to have been, extra Curiam Domini Regis Coram ipso Rege tenend. for the other Addition is onely for the Judges of the Court, that they are assigned, &c. sed non allocatur, for it is all one in substance.

Thirdly, Because the Consideration, quod assensit & contentus fuit, to forbear to prosecute, is no sufficient Consideration, for he may forbear one day, and prosecute again the day following, sed non allocatur, for it is a promise for an absolute forbearance of the prosecution, for that is implied.

Fourthly, That the promise is in April, and the arrest being in January before, it doth not appear that the Writ was returned, nor that it was continued, nor what became of it, or that it had any effect, and it cannot be said to be a Suit commenced, sed non allocatur, for being alledged, that the Writ was sued out, and that he was thereupon arrested, it is a sufficient commencing thereof, the saying of which is a sufficient ground for this Action; wherefore notwithstanding these Errors assigned upon the first motion of them, the Judgement was affirmed, Croq. 2. part. 396.

Ca. 242.

Promise,
upon mar-
riage, to
leave as
much as
to any of
his chil-
dren,

Sanders and Esterby. H. 14 Jac. B. R. Error in the Exchequer Chamber, of a Judgement in B. R. in an Assumpsit against an Executor, upon a promise of the Testator, who in Consideration he would marry his Daughter, promised he would pay unto him a Hundred pound, and leave unto him as much as he left, or gave to any of his other Children; and alledges in fact, that he left so much to one of his Children; and for non-performance of this last part of the promise, he brought the Action, and avers, that the Testator left Assets, as well to discharge all his Debts and

Legas

Legacies, as satisfies him: And after Verdict, upon Non-Assumpsit, being found for the Plaintiff, and Judgement given accordingly; Error was brought and assigned, that the Executor is not chargeable for this Collateral promise. But without Argument all the Justices and Barons (besides Tanfield chief Baron) held, that the Action well lies against the Executor, as well for this Collateral promise, as for a debt: But Tanfield doubting thereof; for he said, it had been oftentimes adjudged, that upon such a mere Collateral promise, the Executor is not chargeable, notwithstanding without further Debate Judgement was affirmed. Note, Hoxwell, Clerk of the Errors said, that once they were all of opinion to reverse the said Judgement, Croc. 2. part 417. See cases 137, 225.

Where, and how an Executor is chargeable,

Henning. T. 15 Jac. B. Regis. Assumpsit, Henning bought Two weights of Barley, and assumed to pay for them, as much as the Plaintiff should have of any other, abating a penny onely in every Bushel: the Plaintiff shews, that he sold to I. S. after this Agreement, two weights of Barley for Eighteen pound, which (abating the one penny in every Bushel) amounted to Seventeen pound ten shillings; and thereupon brought his Action: and because it did not appear in the Declaration, that notice was given to the Defendant, that I. S. had given Eighteen pound, the Judgement was arrested; and for the same reason a Judgement was reversed betwixt Twist and Holmes; and this difference taken, if the Agreement be, that he shall pay so much as I. S. in particular paid; in that Case, quia constat de persona, and he is indifferently named betwixt them, the Defendant at his perils shall inquire of him, and the Plaintiff is not bound

Ca. 243.

Promise to pay for Barley, as much as he had of others, &c.

How to be taken.

Notice to be given

Pleading.

to give notice : But when the person is altogether uncertain, there the Plaintiff to intitle himself to the Action, ought to give notice : And Houghton cited this Case to be lately adjudged, one assumes to save harmless l. S. of all Obligations wherein he shall be bound for l. N. and in an Assumpsit brought, shews that he was bound in an Obligation for l. N. from which he was saved harmless, and doth not shew that he gave any notice to the Defendant, yet held to be good enough, Croo. 2. part 432. See cases 342. 276, 278, 307, 381.

- Ca. 244.** Broeking and Cham. P. 15 Jac. B. R. Assumpsit, that he should enjoy such Lands according to his Lease, without the let, interruption, or incumbrance of any person; and shews in fact, that this Land was extended for debt due to the King by Process out of the Exchequer, and so incumbered, &c. After Verdict it was moved in Arrest of Judgement, that this was not good breach assigned, for he doth not shew for whose debt, nor when, nor by whom it was due; and it may be that it was for the Plaintiffs own debt : And although it was alledged, that if so, and he thereby did not perform the promise, it would not help him : yet it was adjudged for the Defendant, for the Plaintiff ought to shew a lawful incumbrance; otherwise he might have his remedy elsewhere, Croo. 2. part 425. See Dyer 328. 2 Ed. 4. 15.

- Ca. 245.** Coveney and Wooden. P. 10 Jac. B. R. Assumpsit, the Plaintiff declares, in Consideration that the Plaintiff suffered the Defendant to occupy such a House of the Plaintiffs from such a day, till Michaelmas following, the Defendant promised to save harmless the Plaintiff from all losses which he should have by his inhabiting in the said House, and
- also

also that for every farthing worth of damage, that the Plaintiff shall have by such dwelling of the Defendant there, the Defendant would give unto the Plaintiff Two pence upon request: The Plaintiff alleges, that the Defendant occupied and inhabited in the House by his permission, and that the said House, during the time the Defendant inhabited there, and before Michaelmas, was burnt by fire, through the negligence of the Defendant, and yet had not the Defendant saved the Plaintiff harmless of the damage which he had sustained by reason of the Defendants dwelling there, nor paid the Plaintiff Two pence for every farthing worth of loss which he had sustained, to his damage of Forty pound: The Defendant pleaded Non-Assumpsit, and found for the Plaintiff, to the damage of Forty pound, and yet nil capiat per Billam entred, for that the Plaintiff shewed not in his Declaration, how many farthings loss he sustained by the burning of the House; and this is material, for the Court cannot intend, but that the Jury hath given damages, as well for the not saving of the Plaintiff harmless, as for the farthings worth of loss that the Plaintiff had; and this the Jurors ought not to do, unless the Plaintiff shew to how many farthings his loss did amount, per totam Curiam. Yelverton. 220. See cases 307. 316, 332.

Promise to save him harmless,

Burning of a house by negligence.

Pleading.

Dalby. and Cook. H. 7 Jac. B. R. Assumpsit, Ca. 246. whereas the Defendant accounted Insimul with the Plaintiff 1 Martii, 6 Jac. of divers sums of money due by him unto the Plaintiff, and was found in arrearsages Six pound in consideratione inde, he promised to pay it to the Plaintiff cum inde he should be required, yet the Defendant had not paid the Six pound, though on such a day required, damage Twenty

For arrearsages of debt upon an Account.

Bond given for the money.

Pleading.

Twenty pound: The Defendant saith, that before the first of March, &c. in which the account and promise is supposed, the Defendant accounted with the Plaintiff, and was found in arrear Six pound; and that afterwards, and before Martii. 6. viz 5. Decemb. 41 Eliz. for better security of the Six pound, the Defendant and another entered Bond to the Plaintiff in Fourteen pound for payment of Seven pound at a day to come, which Bond the Plaintiff accepted for security of the Six pound absque hoc, that the Defendant ante vel post the Bond Infirmul accounted with the Plaintiff, &c. And upon this the Plaintiff demurred; and it was adjudged for the Defendant, and that the Travers was good; for the Consideration merely is not Travers in this case; for it was agreed, that this is not traversable, but here the account which makes the Consideration perfect, is onely travers, for the debt is confess and avoided, by the satisfaction by Bond, and by that the Assumpsit also is confess: And here tantamounts, as if the Defendant had pleaded payment, and the Plaintiff demurred; for this Action being to recover damages for the Monies not paid according to promise, and the Plaintiff by the demurrer confessing payment, or other satisfaction by bond, as in this case it appears to the Court, that the Plaintiff is not grieved, nor hath any cause of Action, Yelverton. 171. See case 309.

Ca. 247.

Promise to pay upon forbearance by an Executor.

Fish and Richardson. M. 2 Jac. B. R. Assumpsit, the case was such; Fish had a debt owing to him by the Defendo; Richardson upon a simple Contract, and came to the Defendant, and signified it unto him; who said, that if the Plaintiff would forbear suit against him for a time, he promised to pay him 9

him; it is a good promise in Law, for though the Defendant might wage his Law in an Action brought against him by the Law, because it is of another's Contract, yet in Law such a debt upon a simple Contract remains a debt, and is not absolved by the death of the Testator: And according to the book, 10 H. 6. Action of debt lies against an Executor for this; and if he plead to it, and doth not demur upon the Declaration; Judgement shall be given against him, and the Court ex Officio, shall not abate it without challenge of the party; but if the Heir promise upon forbearance of Suit to pay such a debt, yet no Assumpsit lies against him, for there is no Consideration, because the Heir is not liable to any debt sans specially. Yelverton 55.

Pikard and Cottels. M. 2 Jac. B. R. Assumpsit, the Plaintiff shews himself to be possessed of a House in London, in which Sebastian Underholmet had a Chamber, that Sebastian was indebted to the Plaintiff in a Hundred pound, and dyed, possessed of the Chamber, and of divers Writings and sums of money, ibid. remanent. And that the Plaintiff after his death, for recovery of his debt, attacht the goods, &c. being in the Chamber, in the Kings Court before the Mayor, &c. in the hands of the Plaintiff for his debt, according to the Custome of the City; and that the Defendant, in Consideration of the Plaintiff at his request, would permit the Defendant to enter into the Chamber, and take and carry away the said goods attacht, nec non omnia scripta obligat, being there, promised the same day to pay the Plaintiff his Hundred pound; and shews in fact, that he permitted the Defendant to enter the Chamber, &c. yet he had not paid him the Hundred pound; and upon Non-Assumpsit pleaded, and

Ca 247

Consideration, to suffer a man to enter into his house, and take his goods; Promise to pay it.

Conside-
ration of
two parts.

found for the Plaintiff; where it was adjudged, that the permitting the Defendant to enter into the Chamber, and to take and carry away the goods attacht was the Consideration: And also there being two Considerations expect, the one to carry away the goods attacht, the other the carrying away certain Writings Obligatory, which were not attacht, although the first part of the Consideration should be void, yet the other shall be sufficient to maintain the Action; and Judgement accordingly for the Plaintiff, Yelverton 56.

Ca. 249.

Action by
Husband
and Wife
upon loan
of money
by her
dum sola
suir.

Conside-
ration in-
valuable.

Game and his Wife against Harvie. M. 2 Jac. B. R. Assumpsit, the Plaintiffs declare, in Consideration that the Wife dum sola, &c. 1 Junii. 43 Eliz. at the instance of the Defendant, accommodaret to the Defendant Thirty pound to be paid upon request, the Defendant assumed to pay prædictas Thirty pound to the Feme quando requisitus esset, the Plaintiffs lay in fact the Thirty pound to be lent the Defendant 1 Junii 43 Eliz and that he had not paid the Thirty pound to the Feme dum sola, &c. nor to the Plaintiffs post disponsalia, though by both the Plaintiffs he was required at B Maii 44 Eliz. &c. And upon Non-Assumpsit pleaded, was found for the Plaintiff, where it was resolved, that when the intents of the parties may stand wth Law, it shall be expounded accordingly, and the meaning of the parties here was to have prædictam summam, Thirty pound, and not the same Money in specie, & eo magis, quia the Assumpsit is grounded upon a Loan, which implies a use of the Thirty pound by the Defendant, and therefore it being agreed between them, that the Defendant shall use the Money, it is not possible for him to pay the same Money in specie, whth he received. But

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if a man deliver to I. S. a Bag sealed with Money, and the Defendant promise upon request to deliver it, No Assumpsit lies on this; for the Defendant hath not any benefit by it, for the Money being in a bag sealed, I. S. cannot have any use or employment of the Money at all, so that he hath onely a charge imposed for the keeping, but otherwise in the principal case; Yelverton. 50. See cases 79, 231.

Slade and Morley. M. 44 Eliz. B. R. Assumpsit, Action upon the Case upon Indebitatus Assumpsit, lies well; for every debt implies a promise, and is a good Consideration in fact, on which to found an Action. But for debt by simple Contract due by the Testator, no Assumpsit lies against the Executors; and this was openly delivered by Popham, chief Justice, 9 November. 44 Eliz. to be the resolution of all the Justices of England, and this to be a precedent for all cases following. Yelverton 20.

Ca. 249.

Upon an Indebitatus Assumpsit.

Against Executors.

Jennings and Harley. Mich. 44 Eliz. Assumpsit, the Plaintiff declares, how he such a day and year recovered against one Bassett in B. C. in an Action of debt, upon an Obligation of Fifty pound, and how upon this recovery he took forth a special Cap. ut lag. for the body, goods, and Land of Bassett; and shews the Tenor of this Writ especially, and how the Defendant perceiving that the Plaintiff intended to serve the said Writ upon his goods, the said Bassett requested the Plaintiff to stay the Execution of the said Writ till such a day, and if Bassett on that day did not pay unto the Plaintiff the Fifty pound, in Consideration of such a stay of Execution of the said Writ, and for Two Shillings four pence to be given to the Defendant by the Plaintiff, to renew the said Writ of Cap. the Defendant

Ca. 250.

Consideration of forbearance of execution promise to pay the money.

Conside-
ration
good.

promised, if Bassett by the day limited did not pay the Fifty pound, that he would pay it to the Plaintiff: And alledges in fact, the stay of Execution, at request of the Defendant, and the giving of Two shillings four pence for renewing the said Writ, and how Bassett did not pay the Fifty pound at the day, &c. to the damage of a Hundred marks, and upon Non-Assumpsit pleaded, was found for the Plaintiff, where it was resolved by Gaudy, Fenner, and Yelverton, the Consideration is good, for this Cap. utlag. follows upon the original Suit of the party, so that the benefit which the Queen is to have, is by means of the party, and he is at charge to suing it forth, and hath the carriage of the Writ; and if the party be taken, he shall lie in Execution at Suit of him that recovers; and if the Queen, by virtue of the Cap. utlag. hath any goods, she is to satisfy the party at whole Suit the Outlawry happened. But Topham said this, that this is de gratia, and not de jure; but Judgement was entered for the Plaintiff, according to the opinion of the Three Justices: And in this case it was said to be adjudged between Garnons and Layton; that if a man be taken upon a Cap. utlag. after Judgement, he is in Execution for the party, and if he escape, although he was taken at the Queens Suit, yet the party hath such interest in the body, that he shall have an escape against the Sherif, quod nola. Yelverton. 19. and Croo. 1. last publisht. 909.

Ca. 250.

Upon for-
bearance
of a Suit,
a promise
to pay.

Lea and Minne. H. 3 Jac. B. R. Assumpsit, the Plaintiff married with one Alice, Executrix of I. S. her first Husband; the Defendant was indebted to I. S. in a Hundred pound, and promised and assumed to the Plaintiff, that if he would forbear all Suits against him upon the debt, which was by Obligation,

on, till Michaelmas following, that then he would pay the debt to the Plaintiff; the Plaintiff brought an Assumpsit upon this promise, and shewed all the matter before, and how the Defendant was not molested, vert, or compelled till Michaelmas, &c. to pay the debt: And upon Non-Assumpsit pleaded, ^{Averment of the life of a Wife,} was found for the Plaintiff. Et nil capiat per Billam entered, and the peremptory Exception was taken by Tansfield, Justice, for that the Plaintiff asserted not the life of Alice his Wife, which was ^{Executrix in an Action brought by the Husband,} Executrix of I. S. for the promise of the Defendant, was made in respect of a debt in anothers right, which was to Alice as Executrix, and not in respect of any debt due to himself; therefore the promise follows the nature of the debt, viz. to be recovered to anothers use, viz. to the use of I. S. ^{Consideration in- valuable,} and shall be assets; and although it were in the power of the Plaintiff to release the debt, which had been a devotavit, yet now it appears that the true intent was to have it paid, and for non-payment thereof, according to promise, was the Action brought; therefore, for as much as the damages to be recovered go to the satisfaction of the debt due to the Testator, and upon Suit had upon the bond, it may be pleaded in Bar; this shews and manifests the promise to be also to anothers use, and therefore he ought to aver the life of the Wife, which was Executrix to I. S. for by her death the Action upon the promise is determined; and although the Plaintiff cannot sayn his Wife with him in the Action, because the promise was particular and personal, yet he ought to aver the life of his Wife, because the Plaintiff shall recover nothing to his own use, quod nola, fuit concessum. Yelverton. 84.

Ca. 251.

Conside-
ration, not
to implead
another.Conside-
ration,
how to be
perform-
ed.

Smith and Smiths Case. M. 28 Eliz. B. R. One promised, That whereas I. N. was indebted to I. D. in Forty pound by bond, that if I. D. ne implacitaret the said I. N. that if the Money be not paid such a day, that I. S. would pay it to I. D. the Money was not paid: And after the day I. D. brought an Action upon the Case upon the promise, and shewed, quod ipse non implacitavit, &c. Kingmill, he cannot have his Action upon the Case till I. N. be dead, for during his life there is a time wherein he may implead him: As if I promise to another, that if he will be non-suit in his Action, which he hath against a Third person, that if he doth not pay the Money before such a day, that then he will pay the Money there: If the day of payment be before the time, he can be non-suit, as before the Term beginnech, yet he cannot have his Action before he be non suit, for albeit he hath not yet impleaded him, yet he may implead him in posterum; and therefore ought to shew he hath discharged the other of the bond before his Action will lie, Clench, Justice. It is implied, that he shall never implead him, and then he is to shew the bond discharged. Suit. That is not so, for if he sue against his promise, to her to whom the promise is made, may have an Action of the Case, and recover to the value of the sum in the bond, Godb. pl. 88. See cases 55, 70. 144, 162, 194, 283, 383.

Ca. 252.

Pleading

Lord Stanhop and Lequestre. The Lord Stanhop brought on Action upon the Case against Matthew de Lequestre, about the Fees of the Postmaster; and some Exception was to the form of the Declaration; and after motion to arrest the Judgement, it was adjudged for the Plaintiff, Latch. Rep. 88.

Wood and Witherick. The Plaintiff declares upon an Assumpsit, upon an Infimul computave-
runt: The Defendant pleads Infancy, the Plaintiff replies, that it was for necessaries: But there it seemed, this Action may lie against an Infant in some Cases. Latch. 169. But in Stour and Withpools Case, Latch 21. It was agreed, that where the Executor of an Infant doth promise to pay the debt of an Infant, in Consideration of forbearance till Michaelmas (albeit the debt were for Apparel, and stuff had from a Mercer) it is not a good Consideration. But if an Infant be a Tradesman, and contract for good of his Trade; this will not bind him: And there said, if goods be delivered to an Infant to redeliver, and he dye, and the Executor promise to redeliver them; this is a good Consideration, Latch. Rep. 22.

Infimul computaverunt.

Infant. Executor.

Gowood and Binks. Trin. 37 Eliz. The Case was, a man did assume and promise I. S. in Consideration that he would forbear a debt due to him until such a time, that he would pay the debt if A. B. did not pay it: He that made the promise dyed, the Money was not paid, an Action brought against the Executors, and adjudged to lie, albeit it were for a Collateral thing, and not for the debt of the Testator. Owens Rep. 56, 57.

Ca. 234.
Forbearance.
Promise to pay.
Executors

Harrison and Mithford. Pasche. 12 Jac. Assumpsit, The Defendant promised to save the Plaintiff harmless cum inde requisit effect; and no special request was laid in the Court; upon a Non-Assumpsit the Plaintiff had a Verdict, motion to arrest Judgement, for this Cause adjudged against the Plaintiff, See Cases 10. 34, 40, 43, 52. and many others.

Ca. 255.
Request necessary.

Bridge and Cage. M. 3 Jac. B. R. Action sur le
D 04

Ca. 256.
Case

Promise
of mony
to a Sher-
rif, to ex-
ecute a
Wijt for
a friend.

Conside-
ration un-
valuable,
and un-
lawful.

Extorti-
on.

Case, in an Assumpsit, whereas an Executor sued Execution, by an Elegit; the Defendant ut amicus Executoris, in Consideration that the Sherif would execute the Writ, and that for Six pence given unto him by the Plaintiff, being under Sherif of Cambridgeshire, promised to give the Plaintiff Thre-
score pound, and alledges in fact, that he executed the Writ, and thereupon brought the Action: Af-
ter Verdict for the Plaintiff, it was moved, that it was not any Consideration to maintain the Action; for the Sherif by his duty and oath, ought to ex-
ecute the Writ; and therefore to have a promise of Consideration for executing it, is not lawful, and it is quasi Extortion, and therefore ill and unlawful; and although it was alledged, that this sum promi-
sed him, is no more than what the Statute of 29 Eliz. C. 4. allows him to take for his Fees, yet that will not help the Case; for that Statute onely ex-
cuseth him for his taking Fees; if it be no more than what the Statute permits; whereas the com-
mon Law did not permit him to take any thing for the executing Writs. But Warberton said, al-
though the Statute tollerates it, that it is not pu-
nishable (as the Usury of Ten pound per a Hun-
dred pound is tollerated) yet it hath been oftentimes ad-
judged, that for such Fees he hath not any remedy by any Action. And Gawdy said, it is not reasona-
ble, that for the Execution of a Writ by Elegit (where peradventure the Land is not worth Forty Shillings) he should have Six pence for every pound of the debt: And here the giving of Six pence is no sufficient Consideration, being joyned with the other, which is unlawful; wherefore it was ad-
judged for the Defendant, Croo. 2. part 103.

Peck and Lovendens Case. Hillary. 43 Eliz. B. R. Ca. 251.

Assumpsit, whereas T. L. the Defendant's Brother was indebted unto him in Eight pound, and made his Wife Executrix, and dyed, leaving Assets to his Executrix for the payment of all debts, and he intended to sue the Executrix, to recover the Eight pound secundum debitum. Legis cursum, that the Defendant, in Consideration he would forbear the Executrix, promised to pay, &c. after Verdict it was moved, that this was not any Consideration; for this debt is to be intended most strong against the Plaintiff, to be a simple Contract, with which the Executrix is not chargeable, and to stay this suit, is not any Consideration: And of that opinion was all the Court; for the suit intended, is to be intended an Action of debt, which lies not, and so no Consideration, but if he had declared, he intended to sue an Action upon an Assumpsit against the Executrix (as this Declaration doth not warrant it, because he intends to recover the debt it self, which cannot be in an Action upon the Case) or that he intended to sue in Chancery for it (which is not intended here, because he declares, he intended to recover it per debitum Legis cursum) then peradventure this Action would have lain, for the Consideration of staying the Suit was good: But, as it is here, it is not good; wherefore it was adjudged for the Defendant, Croo. 1. last published.

Executor, in consideration of forbearance of a debt due from the Testator, promise to pay,

104.

Taylor and Foster. Hillary. 43 Eliz. B. R. Assumpsit, whereas the Defendant, in Consideration that the Plaintiff would marry his Daughter, assumed to pay for him to I. S. to whom he was indebted a Hundred pound, viz. Fifty pound at such a day, and Fifty pound residue, at the end of the year

Ca. 258, Consideration of marriage, promise to pay money for him that is to have the woman,

ensuing: And because the first Fifty pound was not paid, he within the year brought the Action: And after Verdict upon Non-Assumpsit, it was moved, that the Action lay not till the last day, as in debt, upon an Obligation, payable at Two dayes, sed non allocatur; for true it is, so it is that in debt upon an Obligation, where the entire debt is to be recovered; but not in this Action, or in Covenant, where damages onely are to be recovered: It was also held, that the Action well lies for the Plaintiff; though the Hundred pound had been to be paid to a stranger, and not to himself, because the promise is unto him; wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 807.

Ca. 259. Phillips and Turner. Hillarii. 43 Eliz. B. R.

Promise,
that if A.
B. did buy
of him
Cattle, &
should
not pay
him, he
would.

Assumpsit, Error of a Judgement in Coventry, wherein the Plaintiff declares, whereas there was Communication betwixt him, and one Archer, concerning the sale of certain beasts, that the Defendant assumed unto him, in Consideration he would deliver to Archer such beasts, as he should buy, that if the said Archer bought of him any beasts for such a sum of Money to be paid, ad aliquod tempus, vel tempora tunc futura inter eos concordandum, and did not pay it accordingly, that he would pay it; and alledgeth, that he sold, and delivered to the said Archer Twenty beasts for Eight and thirty pound, whereof Twenty pound to be paid in hand immediately, and the other Eighteen pound at a day to come, and that A. had not paid the Eighteen pound, the Defendant pleaded Non-Assumpsit, and found against him, and Judgement for the Plaintiff.

Pleading.

The first Error assigned, was, that the Consideration is not alledged to be performed, for he assumes

sumes onely to pay for those, which are sold to be paid at a future day, and here it is not sold to be paid at a future day, but part in hand, and part at a day to come. And of that opinion was Popham, that for this cause it was Error: But all the other Justices e contra; for when any part is to be paid at a day future, it is within the Assumpsit, for otherwise he would not have given credit for any part, and the promise is not, if he sells for payment at a future day, but tempus futurum, which is, though part be paid immediately.

Consideration not performed.

A second Error assigned, was, for that the Ven. fac. is awarded de Civitate, whereas it ought to be de vicineto Civitatis, sed non allocatur. for so are all the precedents for tryal in Cities, where no Parish or Ward is alledged, Vid. 7 H. 4. 13. 8 H. 5. 10.

Thirdly, For that it is awarded, servientibus ad Clavam Ballivis, & Ministris Curie, and one of them suely returned it; but because the award was eis. & cor. cuilibet, it was held to be well enough; wherefore the Judgement was affirmed, Croo. 1. last publisht. 807.

Chadwick and Sprite. P. 43 Eliz. B. R. Assumpsit, whereas one Bailly was indebted unto him in Five pound, and being possessed of two Obligations, made by two strangers of Twenty pound, delivered to the Plaintiff the said obligations, to receive the Money due upon them, or to sue them in the name of Bailly; and of that which he recovered, to satisfy himself, and the residue to return back to Bailly, that Bailly dyed; and the Defendant being his Wife, in Consideration that the Plaintiff would deliver unto her the said bonds, promised to the Plaintiff to pay unto him the said Five pound

Ca. 260.

Bonds delivered over to satisfy a debt. Consideration, redelivery of them. Promise to pay the debt.

upon

Confide-
ration in-
valuable,

upon the first payment of any sums of those bonds; and alledgeth, that the Defendant had received those sums contained in the bonds, &c. After Verdict upon Non-Assumpsit, pleaded, and found for the Plaintiff, it was moved, that this is not any Consideration, because by the death of Bailly, who delivered them, the Authority which he gave to the Plaintiff to sue them, is determined, and the Plaintiff hath nothing to do with them: And the Defendant hath not any benefit by the receipt of them, unless she were Executrix, which is not alledged: And if she were Executrix, the receipt of them by her is not any Consideration; for she receives but her own, and therefore there is not any Consideration for the making of this promise. And of that opinion was Fenner, and relied upon 12 H. 7. 14. & 9 Ed. 4. 19. But Gawdy and Clinch, e contra, because by this delivery, and gift of the obligations, the interest in the debts is given unto him; although the debts themselves, which are things in Action, pass not, and he had Authority to dispose of them: And this delivery of them to the Defendant, and by her acceptance, and promise upon this Consideration, whether executed, or not, is sufficient to bind her: wherefore it was adjudged for the Plaintiff, Croo. 1. last published. 821. See case 221.

Ca. 261.
Confide-
ration to
forbear a
prosecuti-
on for
Assaults,
&c. Pro-
mise to
keep the
peace,

Rippon and Norton, M. 43 Eliz. B. R. Assumpsit, whereas there were debates between the Plaintiff, and one Rich. Norton, Son of the Defendant, and the said Richard Norton had assaulted the Plaintiff, and beat him at N. in the County of Northampton, whereupon he complained to Sir Anthony Mildman, a Justice of Peace there, and required the Peace, and made Oath, &c. that the Defendant knowing

knowing thereof, in Consideration the Plaintiff would desist his complaint, and that his said Son should not be vexed, for that cause, assumed to the Plaintiff, that the said R. N. his Son should keep the Peace against the Plaintiff, and Walter Rippon, the Plaintiffs Son, and alledgeth in fact, that he thereupon desisted his complaint; and that the Defendants Son was not vexed, &c. And yet notwithstanding that, the said R. N. the Defendants Son had assaulted the said W. R. his Son, and beaten, and wounded him, whereby he lost his service, and was at great charges in his cure, whereupon he brought this Action: The Defendant pleaded Non-Assumpfit, and found against him, to his damage of Twenty pound; and it was now alledged in arrest of Judgement, that an Action lies not for the Father, because the battery of the Son is not any ground of Action to the Father, unless he had shewn that he was his Servant, which is not done: And to this purpose was cited the case betwixt Lever and Haws. H. 4. Pl. 11. Where one promised to the Father, to give a Hundred pound to his Son in Marriage with the Defendants Daughter, in Consideration of a Joynture assured by the Plaintiff; the Action being brought by the Father for the non-payment of the Hundred pound to the Son, it was adjudged not to be maintainable: So here, because there is not any damage to the Father, by the battery of the Son, an Action lies not for the Father: And although it were objected, that the Father was at the charge for the curing the Son of his wounds, yet because it was a thing he was not compellable unto, it is no cause why he should maintain this Action; wherefore by all the Justices (it being moved at several times)

Want of consideration of a promise;

it was adjudged for the Defendant, Vide postea, P. Pl. 13. Croo. 1. last publisht. 849.

Ca. 262. Clerke and Palady. M. 43 Eliz. Co. Banco. Assumpsit, in Consideration that he would permit the Defendant to enjoy such Land for a year, the Defendant assumed to give Ten pound unto him for that year, and alledgeth in fact, that the Defendant enjoyed it by his permission, &c. After Verdict it was moved in arrest of Judgement, that the Action lay not, because it is not shewn, what right, or title he had to the Land to licence the Defendant to enjoy it, otherwise there is not any Consideration, or cause of Action; and for this cause the Court held it to be ill: As also, for that, if it had been sufficiently alledged, then it had been a demurrer, and an Action of debt, and not an Assumpsit, but then lain upon it; wherefore the Judgement was stayed, Croo. 1. last publisht. 859.

Ca. 263. Garnons and Hodges. M. 44 Eliz. B. R. Assumpsit, in Consideration the Plaintiff should use his endeavour, to procure the Defendants Father to assure such Land, that he would give to the Plaintiff Twenty pound, if he procured the Father to make the assurance; and alledgeth in fact, that he procured, &c. And that the Defendant had not paid, &c. the Defendant pleaded Non-Assumpsit, and found for the Plaintiff, and after Verdict it was moved in Arrest of Judgement, that the Declaration was not good, because he doth not alledge the place, where the procurement was, sed non allocatur; for the promise is in Consideration he should use his endeavour: And now Issue is taken upon the Assumpsit, which is Collateral, wherefore it is good enough; and it was adjudged for the Plaintiff, Croo. 1. last publisht. 905.

Dell and Fereby. H. 44 Eliz. B. R. Error of a Ca. 264.
 Judgement in Norwich in an Assumpsit. The first
 Error assigned, was, for that the Consideration is
 not sufficient to maintain the Action: for it was, Forbearance of a suit.
 whereas the Plaintiff had prosecuted such a Suit in
 Norwich, and they were at Issue, that in Consideration
 he would stay ab ulteriori prosecutione Sectæ
 prædictæ, the Defendant promised him to pay all
 his charges, and expences laid out therein; and
 alledgeth in fact, that he no further proceeded in
 that Suit; and that he had expended therein such
 sums, and that the Defendant had not paid them:
 It was moved, that this matter was not sufficient
 to ground an Action; for although he hath not
 proceeded in the Suit, yet he may when he please;
 so there is not any cause to bind the Defendant to
 pay any thing for it: And to that purpose cited a
 Case to be adjudged. T. 36 Eliz. rot. 52. in the
 common Pleas between Mortle and Ross, that such
 a Consideration was adjudged insufficient to ground
 an Action: But all the Court here held it to be
 good enough, for the staying of the tryal of a cause
 is sufficient to ground an Action, especially for the
 charges expended, and denyed the Law to be so in
 the Case before cited. Secondly, it was moved,
 that the Declaration was ill, because there was not
 any place shewn, where the expences were laid out,
 sed non allocatur; for it being in prosecutione
 Sectæ prædictæ; it shall be intended to be in the
 same Court. This also is but an inducement to
 the Action; wherefore the Judgement was affirmed,
 Croo. 1. last publisht. 868. See cases 55, 70,
 264.

Consideration valuable.

Pleadings

Docket and Voyell. M. 44 Eliz. C. B. Assumpsit,
 whereas the Defendant 10 Maii. 40 Eliz. in Cons-
 sidera-

Promise, that because he had lent money to him, he would lend money to him.

Consideration past

Consideration that the Plaintiff at a certain day, then past, at the Defendants request, had lent unto him Thirty pound for such a time, that the Defendant assumed to lend unto the Plaintiff, upon request, Thirty pound for a year, or otherwise to give him Forty shillings; The Plaintiff alledgeth, that the Defendant did not lend him Thirty pound, licet requisitus, &c. nor paid the said Forty shillings: And it was thereupon demurred, because the Consideration was past, and executed, and the Consideration and promise ought to go together, or else it ought to be a Consideration continuing; wherefore for this cause it was adjudged for the Defendant, Croo. 1. last publisht. 885.

Ca. 267.

Consideration, that he will deliver Corn, that he is bound to deliver to W. S. at a day, to J. S. before the day. J. S. doth promise to deliver it to W. S. at the day.

Riches and Bridges. P. 44 Eliz. B. R. Assumpsit, for that he was indebted to I. S. in Twenty Combs of Barley to be delivered on such a day, in Consideration that he would deliver it to the Defendant before the day, the Defendant assumed, and promised to deliver it at the day to I. S. and alledgeth in fact, that he delivered it to the Defendant, and the Defendant had not delivered it to I. S. It was moved in arrest of Judgement, that this was not any Consideration to deliver the same Corn, which he had received, for he cannot have any use of it, nor any benefit by it: But the whole Court held it to be a good Consideration; for in regard he received it, and made such a promise, it shall be intended that he had some benefit thereby, viz. that he had the better credit to retain it in his hands; or otherwise he would not have made such a promise. And if by any intendment it can be, the Law will well intend it; wherefore it was adjudged for the Plaintiff. Note afterwards upon a Writ of Error in the Exchequer Chamber, it was reversed for this cause,

for

for that there was not any sufficient Consideration; whereby the Law takes any regard, Croc. 1. last published 883. Yelverton. 4.

Lea and Exelby. T. 44 Eliz. B. R. Assumpfit, Ca. 268, whereas the Defendant was possessed of such a Lease for years, the Inheritance being the Plaintiffs, in Consideration the Plaintiff promised to pay unto him such a sum of Money such a day, and place, that the Defendant promised super solution inde, to surrender unto him his Lease, and acknowledged, that he, at the day, and place, tendered the Money, and that the Defendant had not surrendered his Lease: The Defendant pleaded Non-Assumpfit, and found against him; and it was moved in Arrest of Judgement, that the Defendant was not to make the surrender, but upon the payment of the Money, or an express tender and refusal: And the Plaintiff here hath alleged quod obtulit, but he saith not, that the Defendant refused, which is material and issuable; and he might have taken Issue upon the Refusal, if it had been alleged: And although he hath pleaded Non-Assumpfit, yet the Declaration being ill in substance, the Defendant may well take advantage thereof. Coke, Attorney General, moved, that the Declaration was good, and there needed not any tender and refusal to have been alleged; for it sufficeth to allege, that in Consideration he assumed to pay such a sum, the Defendant assumed to surrender: So, there being an Assumpfit against an Assumpfit, it had been well enough: But all the Court held, that if the promise had been, in Consideration he assumed to pay such a sum, that the Defendant had assumed to surrender, that had been sufficient, for then he is to make his surrender, and he ought to take his re-

Promise to surrender a Lease to him in Reversion for money paid

Pleading.

medy against the other for the non-performance of his promise. But here it is, that he assumed to pay, and the other assumed to surrender it upon the payment, so as he would not trust to his promise, but when he had paid, he would then surrender it: And in the first Case, he needed not alledge the performance of the promise, but here in this he ought: And when he saith, quod obtulit, and saith not, that the other accepted it, or refused it, his Allegation of the tender is not to any purpose; for he shall never say, quod obtulit onely, but he ought to plead further, that none was there to receive it, or that he refused; or he ought to alledge payment, and here it is matter of substance, for want whereof, the Declaration is not good, wherefore it was adjudged for the Defendant. And afterwards Coke said, that Willenhalls Case was adjudged, that tender without alledging a Refusal, was not good, Croo. 1. last published, 888.

Ca. 269.

Promise,
in consideration
of discharge of
one arrested to
pay so
much,

Arrest not
lawful.

King and Hobbs. H. 45 Eliz. B. R. Assumpsit, the Plaintiff declares, whereas a Capias against the Defendant was directed to the Sherif of the County of N. to arrest the Defendant, and the Sherif had made his Warrant to Four, & eorum quilibet, to arrest him, whereupon he was arrested by Two of them; That the Defendant assumed, in Consideration the Plaintiff would discharge him from that Arrest, to pay so much, &c. and alledgeth in fact, quod exoneravit eum, from the said Arrest, and that the Defendant had not paid, &c. After Verdict and Judgement in C. B. Error was thereof brought. First, because that this Arrest (the Warrant being made to Four, & eorum quilibet) being made by Two, and not by Four, or by one of them onely, is not good. But Candy and

and Yelverton held it to be well enough, for being but an Authority to make an Arrest, and to execute such a Warrant: It is not so strictly to be pursued, as an Authority to make Liberty, whereby an Estate is conveyed: For it is made here to Four, for the greater aid the one of the other, and therefore Whole is Who may execute it very well: But otherwise it is of a Letter of Attorney to make Liberty. But Fenner held, that in regard that it is but an Authority, it ought to be precisely executed by Four jointly, or by one only. A Second Error assigned was, because he saith, exoneration of the Arrest, and he doth not shew how: But the Court held it to be well enough; for it needs not to be pleaded as a discharge of a Bond, or a Rent, which ought to be stayed, for they cannot be discharged, unless by law, and is ought to be a perpetual and absolute discharge: But the discharge of an Arrest may be by Composition with the party for a time, or with the Sheriff, and by others other means; wherefore it need not be shewn. And for this cause it was reversed. Cro. in last publish. 913.

Slack and Bowfall. T. 21 Jan. B. R. Assumpsit, whereas the Defendant was indebted unto him in five pounds pro reducta ante tempore debito, that the Defendant assumed to pay the five pounds quantumcunque requisitus, and altogether in fact; that after request at such a day, year, and place, made, he had not paid, &c. The Defendant pleaded payment, and found against him: And it was alleged in arrest of Judgement, that the Declaration was not good, because he doth not shew when the Rent was due, nor for what Term, nor upon what Condition; yet because the Defendant has taken notice

Pleading.

Ca. 276.

Promise to pay a Rent then due.

Pleading.

thereof, affirming that he had paid it, and Issue thereupon, and found against him: the Declaration is made good: But otherwise Dodridge and Houghton held, that it had not been good, wherefore it was adjudged for the Plaintiff. Note, there was not any exception taken, that the Assumpsit is to pay a sum for Rent, which is a rent and special duty, as strong as upon a speciality; and in such a case this Action lies not, without some other special cause of promise; but nothing was spoken thereto, Croo. 2. part 668.

Ca. 271.

Consideration, that he hath let his Land at another's request. promise, if the Tenant do not pay the Rent, that he will,

Brookbank and Taylor. H. 21 Jac. Excheq. Assumpsit, whereas the Plaintiff at the Defendants request. 20 April. 19 Jac. demitted to one Jo. Jennings, his house in London for a year, à prædicto 20 Apr. 19 Jac. rendering fifty pound quarterly. That the Defendant promised, if the said Jennings did not pay the Rent, that he would pay it; and alledged in fact, quod virtute dimissionis, he entered the foresaid 20 Apr. 19 Jac. and was possessed, and had not paid the Rent; and that the Defendant licet requisitus, had not paid it: The Defendant pleaded Non-Assumpsit, and found against him; and the Jury find damages occasione assumptionis prædictæ, to five pound, and Judgement thereupon, and Error thereupon in the Exchequer Chamber. The first Error assigned, because the entry is alledged to be before the Term begun: So it is a disseisin, and then no Rent is due, sed non allocatur, for although he alledged an Entry, yet there is not any expulsion alledged, and so no disseisin: And the debt is due by the Contract, and the Action lies upon it. A second Error assigned, was, because it is not alledged, that notice was given that the entry had not paid; sed non allocatur, for he at his peril

peril is to take cognizance of the non-payment, and pay the Rent, otherwise the promise is broken. Thirdly, because the Verdict assesses damages occasione assumptionis predictæ, where it ought to be occasione non performanceis promissæ predictæ. for the promise is not the cause of the damages, but the non-payment thereof, sed non allocatur, for the promise is the cause: And the Jury finding the Issue, and they assessing damages, although it were not found for what cause, yet it had been well enough; wherefore the Judgement was affirmed, Cro. 2. part 684.

Hurford and Pile. P. 16 Jac. B. R. Assumpsit, where as I. S. was in Execution for Forty pound, the Defendant said, deliver I. S. out of Execution, and what it costs you, I will re-pay, whereupon I. S. was discharged by the Plaintiff: The Defendant, for Plea, saith, that after the Assumpsit, and before the Plaintiff had done any thing in that business, he forbade him to meddle therein, and that he would not stand to his promise, whereupon the Plaintiff demurred; and it was adjudged for the Plaintiff; for Houghton, Justice, said, that a man may discharge an Assumpsit made unto himself, but he cannot discharge an Assumpsit made by himself: But at another day, the Defendants Council moved, that it was a good Plea, and that as long as nothing was done, it was but an Executors promise: Dodderidge, if I promise to I. S. that if he will build an house upon my Land before Michaelmas, I will pay him a Hundred pound, and I countermand it before he hath done any thing concerning the house, it is a good countermand: Houghton contra, but he said that may be considered in damages, & adjou-
natur; and afterwards in Trin. Term, Judges

ET
Damages
De
and
b
of
from

Ca. 272.

Promise
to pay up-
on delive-
ry of a
prisoner
out of
execution

Assumpsit
discharg-
ed by
counter-
mand.

Counter-
mand of
an Au-
thority
and pro-
mise aver-
red.

ment was given for the Plaintiff, Croo. 2. part 483.

Ca. 273. Powle and Hagger. T. 16 Jac. B. R. Error of a Judgement in B. C. in an Assumpsit, where the Defendant assumed, in Consideration of divers sums paid unto him, that if Cooper affirmed at his return from beyond Sea, that he received of the Plaintiff Twenty pound, that the Defendant would pay the Twenty pound, and alledgeth in fact, that Cooper returned from beyond Sea, and on such a day, year, and place, affirmed that he received of the Plaintiff Twenty pound; and that the Defendant licet requisitus, such a day, year, and place, had not paid: The Defendant pleaded Non-Assumpsit, and found against him, and adjudged for the Plaintiff, and the Error assigned, for that it is not shewn before whom he affirmed, nor that the Defendant had notice given unto him of this affirmation; for without notice given him, he could not take connu- sance thereof, nor is he bound to pay it, sed non al- locatur, for the Defendant is to take notice of this affirmation, as well as the Plaintiff; for the Plaintiff is not bound to give him notice thereof, for the Act being to be done by a stranger, and not by the Plaintiff, the Connu- sance thereof lies as well in the notice of the Defendant, as in the Plaintiff; and therefore the Plaintiff needs not to give him any notice, whereupon the Judgement was affirmed, Croo. 2. part 492. See cases 273. 280, 338, 39.

Ca. 274. Batesby and Brooksbeck. M. 16 Jac. B. R. As- sumpsit, and declares, whereas he bargained with Sim. Batesby, to sell and deliver unto him a Hun- dred and fifty stone of Wool, for a Hundred and fourteen pound to be paid at a certain day to come: That

That the Defendant, in Consideration the Plaintiff would deliver the said Moll to the said S. B. became fidejussor for the said S. B. assumendo & ad runc & ibidem promittendo to the Plaintiff, to pay the said Money to the said Plaintiff; and allegeth in fact, that he trusting to the Defendants promise, delivered the said Moll to S. B. and the Hundred and fourteen pound not being paid, he thereupon brought this Action; upon Non-Assumpfit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement, that the Declaration was not good, for he grounds the Declaration upon the Assumpfit, and there is not any Assumpfit in the Case, but that he became fidejussor: And then it ought to have been shewn, that the principal had not paid it, being demanded, and so to have alleged a default in him and afterwards a demand of the Surety: And this not being alleged, there is no default alleged; and therefore the Action lies not against him. And of that opinion was all the Court, absente Montague; wherefore it was adjudged for the Defendant, Croo. 2. part 500.

Promise to be Surety for another, to a third person, for goods to be delivered.

Gardiner against Bellingham. Assumpfit, and declared that the Defendant, in Consideration that he was indebted unto the Plaintiff in Ten pound four shillings ten pence, for agistment, and feeding of certain Beasts of his on the Plaintiffs ground; and for Wheat, & aliis mercimoniis per prædict. R. habitis & receptis, did assume to pay to the Plaintiff the said debt, that he hath not paid it; upon Issue Non-Assumpfit, it was found for the Plaintiff, and Seventeen pound five shillings four pence damages and costs: Error assigned, was, that there was no certain cause of the debt assigned, for it is not sufficient to say generally that he was indebted, because

Ca. 275.

Indebitatus Assumpfit.

For Rent before due.

that may be for Rents upon Leases, &c. yet this is certain enough, for Wares and Merchandizes, &c. are personal things, for which an Assumpsit may lie; for it requires not so much certainty, as if it were an Action of debt upon the very Contract, Hobbart. page 7.

Ca. 276. Holmes against Twist, in an Assumpsit, and declares, that he was possessed of a heap of Wood, and sold him one Tun of the said Wood, and he should pay him for it Six months after, at the rate that he should sell the rest, and shewed that he sold and delivered unto Twist the Tun of Wood, and after sold unto one Collins the residue, after the rate of Twenty three pounds a Tun, and the Defendant paid him not the Twenty three pounds according to his promise, and thereupon Judgement was given for the Plaintiff, but was reversed in the Kings Bench, because the Plaintiff had not alledged that he had given notice to the Defendant of the sale and price of the rest, being a thing of his private knowledge, and not like the Case of a Bond to perform it afterwards; and the Judges of the Kings Bench allowed of the Reversal, and took no notice of the Judgement, Hobbart. 70.

Notice to be given.

Ca. 277. Worthington against Garstone. Mich. 22. 23 Eliz. Rot. 378. B. R. In an Action upon the Case, and declared, that whereas he at the request of the Defendant, did sollicite and prosecute an Action of Trespass between the said Garstone Plaintiff, and John Sanders Defendant; the said Garstone did promise to pay to the said Worthington a Hundred pound, the Defendant pleaded that he made no such promise, and it was found for the Plaintiff, and assessed damages to Seventy pounds: And it was alledged in Arrest of Judgement, that solliciting and

Confid-
eration un-
lawful.

and prosecuting of another, is not lawful, but for the Attorney, or Councelloz at Law: But the Court did agree, that it is lawful to be a Solicitor, if it be not for maintenance, Hobbart. 93.

Richard against Carmavellan, Attorney of this Court. Hill. 12 Jac. Rot. 79c. in an Assumpsit, and declares, that whereas he had informed in the Exchequer, against one Milton, for ingrossing of Corn, and ready for tryal, that the Defendant in Consideration the Plaintiff should not proceed in this tryal, but should desist from proceeding, and should also deliver him a note of his costs and charges expended in the Suit, did promise to pay him such his charges so expended, at his first coming into Somersetshire, and then laid the performance of the Consideration on his part: And at such a day after, and before his Action, he came to Taunton in Somersetshire, and yet the Defendant paid him not his charges, being Six pound odd money, which he had disbursed, and made known unto him, by his note delivered (as aforesaid) And upon Non-Assumpsit, it was found for the Plaintiff. Error assigned was, that the Plaintiff ought to have given notice to the Defendant of his first coming into Somersetshire, because it is a thing lying best in his own notice, and the Defendant undertook not the payment by bond, but by Assumpsit onely, and to this opinion Warburton agreed, Hobbart. 93.

Ca. 278.

Promise, upon forbearance, of Suit, to pay.

Notice to be given.

Nichols against Rainbreed, in an Assumpsit, and declares, that in Consideration Nichols promised to deliver the Defendant to his own use a Cow, the Defendant promised to deliver him Fifty shillings, adjudged for the Plaintiff in both Courts, that the Plaintiff had not aver the delivery, for it is promise for promise, and both at once, or else they would

Ca. 279.

Promise, of delivery of one thing for another,

would be Nuda pacta. Hobb. page 121, 80.

Ca. 200.

Promise,
upon for-
bearance,
to pay
what shall
be proved
due.

Yardley against Sir Arthur Ingram, in an Assumpsit, and declares, that Sir Edward Giles was indebted unto her a Hundred sixty pound, and that she told the Defendant that she would arrest him for it, whereupon the Defendant, upon Consideration that she would forbear, did promise to pay so much as she should prove due unto her by the said Sir Edward; and that thereupon she did forbear, until this time; and though a Hundred sixty pound were due, and she can well prove it, yet the Defendant hath not, &c. Hereupon it was found for the Plaintiff, but ended by composition, Hobbart. 292.

Promise
to pay
Money on
a Marri-
age.

Provender against Wood, in an Action upon the Case, for that the Defendant assumed to the Father of the Plaintiff upon a Marriage to be solemnized between the Plaintiff, and the Daughter of the Defendant, to pay him Twenty pound; and it was agreed by Richardson and Yelverton, nullo contradicent, that the Action well lies for the same; and the party to whom the benefit of a promise accreus, may bring his Action, Hetley, page 304.

Ca. 281.

Conside-
ration, to
suffer him
to enter,
and enjoy
a house.
Promise
to pay the
Rent,

Wentworth against Abraham, upon an Assumpsit, and declares, that the Defendant primo die Maii, Anno Dom. 1625. in Consideration that the Plaintiff would permit the Defendant to re-enter into a Messuage and Croft, in which the Defendant had dwelt before, promised that he would pay to him Thirty Shillings yearly, during the time he should enjoy it; and that he permit ipsum re-entrare, and that he should enjoy it a year and a half, which ended at Michaelmas, 1626. And for that he would not pay five and forty Shillings, he, &c. And upon Non-Assumpsit pleaded, it was found for the Plaintiff. And it was moved in Arrest of Judge-

Judgement by Davenport, that by computation of time, it is not a year and a half since the Assumpsit was made: And because debt doth not lie, for that in the Declaration it is said, *permisit ipsum re-contrare*, and doth not say what time, which was naught by all but Hutton, who said, so long as you shall occupy the Land, you shall pay annually, &c. that he may demand half a years Rent: But the whole Court against him; so the Judgement pro hoc tempore was stayed, Herley. page 53.

Traver (in an Action upon the Case) against the Lord Bridgwater and his Wife Administratrix of T. D. her Husband deceased, for that the said T. D. in Consideration that the said Travers tradidisset & deliberasset to the said T. D. divers Merchandizes, he promised to pay, &c. the Defendant pleads, that the said T. D. Non-Assumpsit, and it was found for the Plaintiff, and moved in Arrest of Judgement, that it was no Consideration; and adjudged for the Defendant; for when he said, tradidisset & deliberasset, that they might be his own goods, otherwise if he had said vendidisset de novo, Ed. 4. 19. Accordingly, Herley. 61.

Palmer's Case, it was held by the Court; if a man assume to pay Money due, in Consideration to forbear to sue him *paululum temporis*; and if he forbear for a convenient time; it is a sufficient Consideration upon which to ground an Assumpsit. The Case was between Palmer and Rouse. P. 40 Eliz. Rot. 537. The Plaintiff counts, that I. S. was indebted to him upon an Obligation, and he forfeited it, and dies, and made the Defendant his Executor; and that the Plaintiff was forced to sue the Defendant, and in Consideration of the promise, the Defendant assumed, that if the Plain-

Pleading.

Ca. 282.

Consideration.
Delivery of goods.

Promise to pay for them.

Ca. 283.

Promise to pay money upon forbearance to sue.
paululum temporis.
Certainty.
Incertain-ty.

tit

tif would forbear him pro brevi Tempore, that he would pay him, and the Plaintiff seditur adhibens, &c. forbore Four years to sue him, and said that the Defendant had Assets; The Defendant said, absque hoc, that he had Assets; and upon that the Plaintiff demurred, and adjudged for him, for the alledging of Assets in the Court is surplusage; and now the Consideration was sufficient for he had counted he had forbore for Four years, Hetley. 62.

Ca. 284.

Several Assumpsits.

Request.

Gammon against Malbarn in an Assumpsit to pay Thirty four pound, which accrewed upon several promises. First, he surmised, that one was indebted to him in Twelve pound; and that he would trust him more; the Defendant came and prayed him to trust him, and if he would, he would pay him the old debt; and whatsoever he should be in arrear more: If it did not exceed a Hundred pound, he would, and shews how he afterwards sold to him divers pieces of Flesh at reasonable prices; and that he lent him Three pound, which he promised to pay; and then he came and requested him to pay the whole Thirty pound, but he would not pay the Nineteen pound for the price of Flesh, nor the Twelve pound, &c. Hendon moved an Arrest of Judgement (Non-Assumpsit being found for the Plaintiff) because that he doth not alledge before, that the Flesh that he sold amounted to the price of Nineteen pound; and because he makes but one request for several debts, where it ought to have been several; but it was thought good, and adjourned, Hetley. 81.

Ca. 285.

Against an Executor.

Holford against Gibbes, and his Wife (in an Action upon the Case) who was Administratrix upon a promise of the Intestate, which appears in the Declaration, that it was Sixteen years since the promise made. And Sir Thomas Crew prayed to
be

be discharged of the Declaration, upon the Statute of 21 Jac. cap. 16. But the Court held, that if upon the shewing of the Plaintiff himself, the Action appears to be out of the Statute of Limitations, then the Defendant ought to plead the Statute, and he shall be aided by the Averment.

Limitation of time

Bible against Cunningham, in an Action upon the Case, and declares, that there was a Communication between him and the Defendant of the Sale of a Bank, and an Acre of Land, and that in Consideration thereof, and that the Plaintiff would assure and deliver to the Defendant possession of all the Bank, as soon as he could, and that at all times upon request to be made to the Plaintiff by the Defendant, the Plaintiff would become bound in a Statute Merchant to make the assurance to the Defendant: The Defendant promised to pay to the Plaintiff Seventy two pound at the end of Three years from Michaelmas next ensuing; and that in the mean time for the forbearance, he would give after Eight pound in the hundred: And that he became bound in a Statute Merchant for the payment of Seventy two pound; and he alleges, that the Defendant did not become bound in the Statute: But that he himself delivered possession as soon as he could: And upon Non-Assumpfit pleaded, it was found for the Plaintiff; and the Court agreed that the Action well lies, Herley 89.

Ca. 286.

Consideration, to give him possession of Land, and assure it.

Promise to pay money.

Holmes against Chene, in an Assumpfit, the Plaintiff declares, that there was an Account between him and the Defendant, of divers sums of Money, and it was found that the Defendant owes to the Plaintiff Three pound; and upon that he promised upon the request to pay it, and upon Non-Assumpfit pleaded, it was found for the Plaintiff, and moved in arrest of Judgment, that the Plaintiff doth not

Ca. 287.

Summ Upon an Account, and money due.

Ca. 288.

not shew for what thing the Money was but, never-
theless Judgement was given for the Plaintiff,
Hutley. 106, 113.

Ca. 288. Brown against Hancock, in an Assumpsit, and declares, that whereas the Tenth of May, 16 Jac. there were some controversies between Charles Nichols, and the Brother of the Defendant, concerning arrearages of Rent, and it was desired that Nichols would part with his Term, and he should have Pinetien pound, a Cloak, and a Gelding for his Term, which he refused: Afterwards the Defendant, in Consideration that the Plaintiff would labour with the same Nichols, to take the offer, assumed, that whatsoever he undertook, he would perform, and save him harmless for any thing he should do in that business; and then he said, that he procured the said Nichols to resign his Term, and accept the offer, which the Defendant did not perform; and also that the Plaintiff obliged himself for the performance of Covenants (to the said Charles Nichols) in a bond of Fifty pound; and afterwards Nichols filed a bill of debt for the Money, and compelled him to pay it: And upon Non-Assumpsit pleaded it was found for the Plaintiff, Hutley 111. Motion to arrest Judgement, &c adjournat.

Ca. 289. Hutchinson against Chester, in an Action upon the Case; and declares how the Plaintiff was doing certain business for the Defendant; the Defendant said to him, do it; and He repay you whatsoever you lay out, and shews that he had expended Four pound, and doth not shew in certain and particular circs quid; and so, that cause it was brought, Hutley. 122.

Ca. 290. Bragg and Bristows Case. It was agreed by the Court,

Court, that where there was a difference between one and another, who had married his Daughter, which difference was referred to a friend to compound: And he ordered, that the Father and the Son should enter into a bond to pay so much to the Daughter; and afterwards the Son promised to do it: That here might be a sufficient Consideration between Father and Son for the making of that promise, *Hetley. 126.*

Promise to stand to an Award made before.

Willson against Peck, in an Action upon the Case; and declares, that the Defendant, in Consideration that the Plaintiff should be his Solicitor in several Suits depending against him in this Court; allowed that he would give him for his pains as much as he deserved; and he said, that he deserved five marks; and upon Non-Assumpsit pleaded, it was found for the Plaintiff; and it was moved, that the Consideration was against Law; but afterwards the parties agreed, *Hetley. 129.*

Ca. 291.

Promise to pay for soliciting a business.

Royes Case. A Sheriff had taken one by capias ad satisfac, a stranger assumes to him, that if he will let him go at large, that he would pay him what damages he should sustain thereby: So that on upon the Case will lie for that promise, because it is against the Common Law. *Ann 23 H. 6. 2 H. 5.* If a man oblige another in a bond, not to follow his Trade, it is void, *Hetley. 175.*

Ca. 292.

Promise to a Sheriff, if he will let go one that is in execution, that he will defend him.

Daleys Case. Serjeant Arthure Hewed, to the Court, that an Action upon the Case was brought by the Sheriff of S. and declares, that the Defendant assumed, that if he would put such an one in execution into the Castle of ——— which he had recovered against him to save him harmless; and shews that he did take him in Execution, and for that that he was indicted for a forcible entry, and

Promise unlawful.

Ca. 293.

Promise of money to the Sheriff, to put one in prison upon a writ.

lues in the Bear-Chamber, ad damnum Five hundred pound: And the Court seemed, that it was not a sufficient Consideration, for it was no more than by his office, he ought to do: But if it was upon another matter, otherwise it should be: And for that they said, the Serjeant might have demurred to the Defendant, Hetley. 175.

Ca. 294. Hadues against Levit; an Action upon the Case was brought, that in Consideration the Plaintiff would consent that his Son should marry the Daughter of the Defendant, and that after the Coverture upon request of the Defendant, the Plaintiff shall make a Joynture of Twenty pound to the Wife; That the Defendant should give Two hundred pound to the Son in Marriage; they are married, the Money is not paid, the Father of the Son brings his Action, and shews how he is endamaged, &c. It was adjudged, that where Two Fathers promise upon the Marriage between the Daughter of the one, and the Son of the other, that the Father of the Son shall give a Hundred pound Stock, and the Father of the Daughter a Hundred pound Money: The Money was paid, and the Stock not delivered; and the Action was maintained by the Father, and is maintainable. Hetley. 176.

Ca. 295. Herrenden (in an Assumpsit) against Margare Palmer, Administratrix of her Husband, and declares that her Husband had bought of him Gold, Silver, and Pearl, and was indebted to him in Two hundred pound, for the aforesaid Gold, &c. and she after his death, had likewise bought of him Pearl for Twenty seven pound, and that upon account she was found indebted both these sums to him; and promised payment upon Non Assumpfit

Assumpsit, Judgement was given for the Plaintiff, Error assigned, was, that the Defendant was to be charged in Two manners; one in her own Right, the other as Administratrix; and therefore Judgement was reversed, Hobbart. 121.

Brinsley against Partridge. In an Action upon Assumpsit, and declared, that he accounted with the Defendant for divers sums of Money due to the Plaintiff, whereupon the Defendant was found upon the same account in arrearages to the Plaintiff Fifty seven pound: The Defendant, in Consideration thereof, promised to pay the Plaintiff the odd Seven pound at a certain day, which he did not, to his damage, &c. The Defendant pleaded Non-Assumpsit, whereupon the Plaintiff had Judgement, which was confirmed, because by the Accounts the debt was confessed, Hobbart. 121.

Ca. 296.

Upon account Indebitatus.

Pasche. 15 Jac. One brought an Action upon the Case, and counted that the Defendant (in Consideration that the Plaintiff would take such a Woman to his Wife) promised to pay Twenty pound when he should be thereto requested after the Marriage; and that the Plaintiff such a day had married the said Woman; and the Defendant (though often requested) did not pay the aforesaid Twenty pound: And it was moved in Arrest of Judgement, that he had not shewn any particular request: But yet Judgement was affirmed for the Plaintiff, Hurton. page 2.

Ca. 297.

Promise to pay money upon request, if he will marry I.S.

Request to be shewn.

Bigg against Malin. (In an Action upon the Case) as Administrator, and counts, that whereas the Intestate was indebted unto him in Ten pound; and the Defendant was also indebted unto him in Forty shillings, they accounted; and upon account the debt being Twelve pound, the Defendant be-

Ca. 298.

Indebitatus upon account.

ing Administrator, did assume and promise to pay it, & licet sapius requisitus, non solvit; and upon Non-Assumpsit pleaded, it was found for the Plaintiff, and the Plaintiff had Judgement, Hutton. 27.

Ca. 299.

Promise
to pay
upon for-
bearance
of a Suit.

Trin. 28 Eliz Rot. 329. Smiths Case. Smith assumed upon himself, that where I. S. was indebted to I. D. in an Obligation of Forty pound, that if I. D. would not implead the said I. N. that then if the Money were not paid at such a day, that then he, viz the said Smith would pay the Money, upon which Assumpsit after the day I. D. brought his Action upon the Case, and did set forth in his Declaration, that he did not implead the said I. N. And it was moved by Kingmill, that he could not have his Action, until I. N. be dead, for so long as he lives I. D. hath time to implead him. As if a man promise another, that he will be named in his Action, that he hath against a third person; and if the third person pay not the Money at such a day, then he will; he cannot sue unless he shews he hath discharged the other of the Obligation: And after the Case was moved again, and the Plaintiff brought the Obligation in Court, which was entered, so that the Plaintiff could not implead I. N. in posterum, for which Judgement was entered for the Plaintiff, Owen. 29.

Ca. 300.

Conside-
ration, to
suffer him
to enjoy
Land.
Promise
to pay
money;

Hunts Case. Hill. 30 Eliz. R. 17, 32. Hunt brought an Action of the Case against Tourney, and declared, that he being seized of Lands in Swainton in Norf. in fee, secundum consuetudinem Manneri: The Defendant did promise to the Plaintiff, in Consideration he would permit him to occupy the same for the space of Five years, that he would pay him at the Feast of All Saints next coming, and so yearly Twenty pounds at the Feasts of the

the Annunciation, and All Saints, by equal portions, during the Term aforesaid, and alledged, that he had enjoyed the Lands by the space of a year and a half, and so, brought his Action on the Assumpsit; And the Plaintiff had Judgement by the Court, Owen. 42.

Collins against Willis, The Father makes a promise to Willis, that if he would marry his Daughter, to pay him Four-score pound for her portion, but Willis demanded a Hundred pound, or else did refuse to marry her, whereupon the Daughter prayed her Father to pay the Hundred pound, and in Consideration thereof, he did assure him to pay him Twenty pound back again: The Hundred pound is paid, and the Marriage took effect; and the Father brought his Action upon the Case against the Husband and the Wife, for the Twenty pound. Gawdy and Fenner said, that the Action would lie, Popham held the Consideration void, Owen, 63. Mich. 39 Eliz. See case 289.

Mores against Conham. Mich. 7 Jac. in C. B. In an Action on the Case upon an Assumpsit, the Plaintiff declared, that Lovet was indebted to him in a certain sum, for which he pawned to the Plaintiff certain goods to the value of a Hundred pound, and the Defendant promised the Plaintiff to pay the debt, if he would deliver the pawn, and hereupon the Defendant demurred; and two points were moved, one to the form, and the other to the matter. First, the Plaintiff declared, the Assumpsit was pro diversis bonis & catallis, delivered to Lovet, without shewing what goods, or of what kind, for this is the Consideration of the Contract, and therefore ought to be pleaded in certainty: But resolved by the Court, that the Plea and the Consideration

¶ ¶ 2

were

Ca. 301.
302.

The Daughter doth promise to pay back part of her portion, if the Father will make it up so much. Void consideration

Ca. 303. Promise to pay a debt upon the delivery of a pledge left for it.

were good; whereupon Judgement was given for the Plaintiff, Owen. 123. See case 4.

Ca. 304. Pasch. 26 Eliz. Intr. Mich. 25, 26 Eliz. In Com. & 305. B. Dorothy Richards Executrix of A. her former Husband, brought an Action upon the Case, upon a promise against Bartlet, and declared, that in Consideration of Two Weights of Corn delivered by the Testator to the Defendant, he did promise to pay to the Plaintiff Ten pound; to which the Defendant said, that after the Assumpsit, the Plaintiff, in Consideration that the said Two Weights were drowned by Tempest, and in Consideration that the Defendant would pay to the Plaintiff for every Twenty Shillings of the said Ten pound, three Shillings four pence, scil. in toto Thirty three Shillings four pence, did discharge the said Defendant of the said promise, and averred further, that he hath been alwayes ready to pay the said sum newly agreed, upon which there was a demurr: And the opinion of the whole Court was clearly for the Plaintiff; so Judgement was given for the Plaintiff, Leonard. page 19.

Sale of
Barley for
money.

Discharge
of an Assumpsit.

Ca. 306. Cook and Songat's Case. P. 30 Eliz. In an Action upon the Case, the Plaintiff declared, quod cum quædam iis, and Controversie had been moved betwixt the Plaintiff, Lord of the Mannor, &c. and the Defendant claiming certain Lands, parcel of the said Mannor, to hold it by Coppy, and whereas both parties submitted themselves to the Judgement and Arbitrement of I. S. Councelloz at Law, concerning the said Land, and the Title of the Defendant to it. The Defendant, in Consideration that the Plaintiff promised to him, that if the said I. S. should adjudge the said Coppy to be good and sufficient for the Title of the Defendant, that then

Promise
to per-
form what
he shall set
down by
I. S. about
such a dis-
ference.

Recipro-
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mises.

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he would suffer the Defendant to enjoy it without molestation: The Defendant promised, that if he adjudged to the contrary, that he would surrender the said Land to the Plaintiff without any Suit; and shewed further, that I. S. had awarded the said Coppy utterly insufficient; yet the Defendant did not surrender possession of the Land, &c. And after it was argued whether the Consideration was good: It was adjudged good by Gawdy; whereupon Judgement was given for the Plaintiff, Leonard. 103.

Atkinson and Rolles Case. Mich. 30 Eliz. In an Ca. 307
 Action upon the Case, the Plaintiff declared, that the Defendant, in Consideration of the love which he bore unto A. his Father did promise, that if the Plaintiff would procure a discharge of a debt of I. S. which his said Father owed to I. S. that he would save the Plaintiff harmless against the said I. S. and declared further, that he had discharged the Father of the Defendant from the said debt, and is become bounden to the said I. S. in an Obligation for the payment of the said debt; upon which Obligation the said I. S. hath sued the Plaintiff, and hath recovered, and had Execution accordingly, and so hath not been saved harmless, &c. Consideration, to compound for, and discharge a debt owing by A. to B.
 It was objected, that the Declaration was not good, because the Plaintiff did not shew that he had given notice to the Defendant of the said Obligation, but that was not allowed, for the Declaration was holden good; it was adjourned, Leonard. 105. Promise to save him harmless from it.

Dallaby against Hassels. Pasch. 30 Eliz. In an Ca. 308.
 Action upon the Case, the Plaintiff declared, that in Consideration the Defendant had retained him to go from London to Paris to Merchandize divers goods to the profit of the Defendant, promised to Pleading.
 give him. Notice to be given.
Promise to content one for work done for him.

Notice to
be given.

give him so much as should content him, and also to give him all and every sum of Money, which he should there expend in his affairs, and further declared, that he was contented to have Twenty five pounds for his labour, which the Defendant refused to pay: And exception was taken to the Declaration, because there is not any place or time of the notification of his contentment, for the same is traversable; yet Judgement was given for the Plaintiff, Leonard. 123.

Ca. 310.

Upon an
indebitatus
assumpsit,

Jennings against Winche. Trin. 32 Eliz. In an Assumpsit, the Plaintiff declared upon an Assumpsit, by the Defendant primo Maii, 32 Eliz. and counted upon a Mutuatus for Twenty shillings, and an Indebitatus for Four pounds: The Defendant pleaded, that he being indebted to the Plaintiff in Five pounds, and W. S. in another Five pounds, they became bounden to the Plaintiff in Twenty pounds for the payment of Ten pounds in satisfaction of the said sum of Five pounds, and Five pounds; and that the Obligation was sealed before the day of the Assumpsit, supposed and added, that the same is the same debt, and that the Obligation was made for the said debt; and by the opinion of the whole Court, the same cannot be a good Plea, Leonard. 154. See case 245.

Ca. 311.

Promise
to pay for
goods
bought.

Mich. 31 Eliz. Com. B. In an Action upon the Case the Plaintiff declared, that he had delibered to the Defendant diversa bona ad valentiam Ten pounds, the Defendant, in Consideration thereof, did promise to pay the Plaintiff the debt owing pro bonis predictis, and did not shew that the Defendant bought the said goods of the Plaintiff, and so it doth not appear that there was any debt; and then a promise to pay it is merely void, which was agreed

agreed by the whole Court, Leonard. 157.

Kirby against Eccles. Trin. 31 Eliz. In an Acti- Ca. 312.
on upon the Case, the Plaintiff declared, quod cum Promise
quædam communicatio fuisset betwixt the Plain- to pay for
tis, and one Cowper, that Cowper should mast cer- Hogg.
tain Hogs for the Plaintiff, the Defendant did Promise to
promise, that in Consideration that the Plaintiff pay for
should give unto him Three shillings four pence for much for
the fattening of every Hogg, that the said Hogs it,
should be re-delivered to him well fatted, to which
promise and warranty, the Plaintiff giving faith,
delivered to the said Cowper One hundred and fifty
Hogs to be masted; and that One hundred of
them were delivered back, but the residues were not:
And it was moved, that there is not any Consid-
eration, for which the Defendant should be charged
with any promise, but, upon the warranty it was
thought maintainable by Clench and Wray, but
Gawdy was of a contrary opinion, Leonard. 186.

Bishop and Harecourts. Mich. 32, 33 Eliz. In Ca. 313.
an Action upon the Case, the Plaintiff declared, Promise of
that the Fifth of June, 30 Eliz. The Defendant money for
(in Consideration that the Plaintiff the same day, a Horse.
and year, sold and delivered to the Defendant a
Horse) did promise to pay the Plaintiff a Hundred
pound in Trinity Term then next ensuing, and
shewed that the Term began septem. Junii after;
and upon Non-Assumpfit pleaded, it was found for
the Plaintiff, and afterwards Judgement was given
for the Plaintiff, Leonard. 210.

Short against Short. Pasch. 26 Eliz. In an Action Ca. 314.
upon the Case upon Assumpfit to pay Money to Promise to
the Plaintiff upon request: It was agreed, that the pay money
Plaintiff, by way of Declaration, ought to alledge on request
an actual Request, and at what place, and at what Request to
be made.

day the Request was made: And it is not sufficient to lay, as in an Action of debt, licet sapius requisitus, &c. and so it was adjudged, Leonard. 287.

Ca. 314.

For a Rent
charge for
life.

Mich. 26, & 27 Eliz. The Case was, A Woman seized of a Rent charge for life, took a Husband, the Rent was arrear, the Wife dyed; The Tenant of the Land charged, promised to pay the Rent, in Consideration that the Rent was behind, &c. and some were of opinion because that this Rent is due and payable by a Debt, that this Action of the Case upon Assumpsit will not lie, no more than if the Obliger will promise to the Oblige to pay the Money due by the Obligation; an Action doth not lie upon the promise, but upon the Obligation: But it was holden by the whole Court, that the Action did well lie; and so Judgement was given for the Plaintiff, Leonard. 293.

Ca. 315.

Amongst
merchants

Pleading.

Hoskins and Stupers. Mich. 32 Eliz. In an Action upon the Case, the Plaintiff declared, that whereas the Plaintiff had sold to the Defendant a Thousand couple of Newland-Fishes to the use of the Defendant, and in Consideration he should ship, and should bring and carry the Adventure of them from Bristol in portum of St. Lucar, and should carry back again the value of the said Fish to London, or Bristol, secundum usum Mercatorum: The Defendant did promise, that upon the arrival of the said Fish, in portum of Saint Lucar, he would give to the Plaintiff a Hundred and twelve pound, and said that he arrived with the same Fish at portum of Saint Lucar, and that afterwards he arrived with the goods of the value of the said Fish, at portum of London, secundum usum Mercatorum. It was holden by all the Judges, that in portum, and at portum is all one: And afterwards Judgement

ment was given for the Plaintiff, Leonard. 335.

Palmer against Smalbrooke. Trin. 30 Eliz. In an Action upon the Case, the Plaintiff declared, that the Defendant had recovered a certain debt against A. and thereupon purchased a Writ of Capias against A. to take his body, and delivered the said Capias to the Plaintiff, being then Sheriff, and prayed a Warrant for the serving of the said Capias, and that he would name in it one B. for special Baylis, and promised the Plaintiff, that if B arrested A. by force of the said Capias, and suffered him to escape, that he would not sue the Plaintiff for the escape; and shewed further, that he made a Warrant according to the said Capias, and therein named the said B. for his special Baylis, who arrested A. accordingly, and afterwards suffered him to escape: And the Defendant, notwithstanding his promise aforesaid, sued the Plaintiff for the said escape: And it was found for the Plaintiff, and afterwards Judgement was given for the Plaintiff, Leonard. 132. and Owen. 98.

Ca. 316.
Promise to the Sheriff, that if he put into the Warrant such a special Baylis, that he shall not be troubled for any escape.

Mich. 2 Car. 1. Franklin against Brakell. Franklin, a Woman servant brought an Action upon the Case, upon a promise against John Bradell; and counts, that whereas she had served the Defendant and his Wife, and done to them loyal service, the Defendant, after the death of his Wife, in Consideration of the service which the Plaintiff had done to the Defendant and his Wife, promised to pay her Thirteen Shillings four pence upon request, and alledged request, and non-payment, and after Verdict for the Plaintiff; Judgement was given for the Plaintiff, Hutton. page 84.

Ca. 317.
Promised of money for service past, not good.

Trin. 3 Car. 1. Rot. Humbleton against Buck. Simon Humblaton brought an Action upon the Case.

Ca. 318.

From use to
Pay the
charges.

Case against Buck, and counted, that whereas a Controversie was between the Inhabitantes and Tenantes of Fletam, and one Palmer, for, and concerning the having of Common in one parcel of Land, which was a Sea-bank, in which they had Common of pasture, for feeding of Cattle; and also by taking and cutting the grals: And whereas the said Palmer had brought an Action of Trespals against the now Plaintiff, for entry made by him in the said Close; and for taking his grals, pretending that the said Land in which he claimed Common, was his, severall, and free from their claim of Common, the Defendant, in Consideration that the Plaintiff had given to him a Jugg of Beer, and that he at the request of the Defendant would prosecute and defend the said Suit, for the maintenance of their Common against the said Palmer, until the determination thereof, he promised to pay to the Plaintiff one moyety of his charges, and over and besides Twenty pounds, and that thereupon he defended the said Suit, and pleaded not guilty; and at the tryal thereof, Palmer was non-suited, and that it was for the maintenance of the Common, and that he expended in defence and prosecution of the said Suit Forty pounds.

Pleading,

The Defendant confessed all the Inducement, and also a promise sub modo, and said, that the said Palmer had brought Trespals, to which the Plaintiff had pleaded not guilty, absque hoc, that the Suit and Tryal was for the said Common; and Issue being joyned, it was found for the Plaintiff, and damages to Twenty pounds, Hutton, page 89.

Ca. 321.

Mich. 4 Car. 1. Mackerney against Ewrin Richard Mackerney brought an Action upon the Case against Jeffery Ewrin, and counts, that whereas

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one I. S. was indebted to the Plaintiff in Seven pounds four shillings, for pasture, feeding, and Darts for an Horse kept in the Stable of the Plaintiff: The Defendant, in Consideration that the Plaintiff at his request would deliver the Horse to him, to the use of the said John S. promised to pay the said Seven pounds four shillings; and upon Non-Assumpsit pleaded; and Verdict for the Plaintiff, it was adjudged a good Consideration; Hutton. page 101.

Consideration that he was at charges to keep a horse and should deliver him to I. S. That I. S. doth promise to pay for it.

Mich. 5 Car. 1. Bill against Lake. Francis Bill brought an Action upon the Case against Sir Arthur Lake, and counted, that whereas at the special instance of Lettice, Wife of the Defendant, he had provided for the said Lettice a Cassety Robe, the Defendant did assume to pay as much as it was worth upon request; and so in like manner for providing of Linnen, Russe, &c. and making of several Garments for the Wife; and avers that the several things bought amount to such a sum, and the making thereof was worth such a sum, which in toto, &c. and alleges the request; and avers, that they were necessary Vestiments; and convenient for the degree of the Wife, and after the making of them he had delivered them to the Wife, the Defendant pleaded the Statute of 21 of King James for Limitation, and said, that the Plaintiff within six years after the promise supposed, nor within three years after the end of the Parliament, had not prosecuted any Original, or any Action upon this promise and Assumption, whereupon the Plaintiff demurred: But the Court inclined, that no Action of debt lay against Sir Arthur upon this Assumpsit, but onely an Action of the Case upon the request; Hutton. page 105.

Ca. 322. Promise to pay for a womans Cloaths that hath a Husband.

Limitation of Actions.

Request

Mich.

Ca. 321. Mich. 4 Car. 1. Treford against Holmes. Treford brought an Action upon the Case against Holmes, as Executor, and counted, that whereas the Testator was indebted to the Plaintiff, the Defendant, in Consideration that the Plaintiff would forbear the said debt for a reasonable time, assumed to pay it: And this promise was made in December, and he shews forbearance until March next, and upon Non-Assumpsit pleaded, and Verdict for the Plaintiff; the Plaintiff had Judgement, Hutton, page 108.

Ca. 322. Martin and Vaux. Trin. 40 Eliz. C. B. Rot. 529. An action upon the Case, and declares, that with his Testator, &c. he delivered certain Wares to I. T. and I. H. &c. ad compatum inde reddend. by I. T. and after that, &c. I. T. goeth over Seas, and the Testator dyeth, and that after, &c. I. T. sent into England a Hundred Hintals of Wood, &c. to satisfy the Plaintiff of his account, which Wood came to the hand of the Defendant, who delivers a Parcel of it to the Plaintiff, in satisfaction of part of the Account, &c. and the Defendant super se assumpsit, that if the Plaintiff would forbear the said I. T. for the residue, until his return into England, which he hoped to be within Three months, or thereabouts, and then the Defendant would satisfy the Plaintiff all that should appear to be due upon account, by virtue of which he hath forborne Three months, and that Three thousand pound was due, and in arrear upon the said account, which the Defendant hath not paid per quod actio, &c. And upon the Non-Assumpsit, it was found against the Defendant, &c. and in Arrest of Judgement divers exceptions were taken to the Declaration, but Judgement was given for the Plaintiff, Noy, page 8. Weeks

Goods delivered to satisfy a debt in part, promise upon forbearance to pay the rest of it,

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Weeks and Tybald. Mich. 2 Jac. Rot. 364. In an Assumpsit the Plaintiff alleges, that whereas there was a Communication of Marriage between the Plaintiff, and the Daughter of the Defendant, that the Defendant upon speech between the Father of the Plaintiff, and the Defendant; for free liberty to the Plaintiff to come to the house of the Defendant, to woe his Daughter, the Defendant then and there affirmed and publisht, that he would give a Hundred pound to him that should marry his Daughter with his consent, &c. By the Court the Action doth not lie, for asservit & publicavit doth not make words that include a promise. It is not averred nor declared to whom the words were spoken, and it is not reason that the Defendant should be bound by such general words spoken, to crisse Suits, Noy. 11.

Ca. 233
234

Promise of
mony: upon
marriage.
Incertain-
ty.

Baghar and Salter. Hill. 1 Car. 1. In an Assumpsit, the Plaintiff declares, that whereas John Green was indebted to the Defendant in Thirty pound; and that the Defendant had sued and recovered against Green, and in Trin. 18 Jac. had a Cap. utlegat. against Green, directed to the Sheriff; and upon Communication between the Plaintiff and the Defendant; the Defendant promised, that if the Plaintiff would go to the Sheriff, and procure a special Warrant, and arrest John Green, that he would give him Forty shillings; and averred that he had done so, and had often requested the same of the Defendant; and Issue joyned, upon Non-Assumpsit, it is found for the Plaintiff: And it was moved in arrest of Judgement, and so ruled by the Court, that the Assumpsit is void, by 43 H. 6. And Judgement quod querrens nil capiat. But one Audleys Case was vouched and agreed,

Ca. 325.

promise
of money
to one
that shall
go to the
Sherif to
get him to
arrest up-
on execu-
tion.

agreed, that an Assumpsit made to a stranger, to go and help the Sheriff to make Execution, is good, and an Assumpsit lies, Noy. 76.

Ca. 236. Cowlin against Cook. In an Action upon the Case, and declares, that whereas the Defendanc was obliged to him in a Hundred pound, and that he intended to sue him for it, that the Defendanc, in Consideration the Plaintiff would defer the payment of the Money aforesaid, and not sue him upon that obligation, promised that he would pay him, and assumed upon that. It is not a good Consideration, for he may forbear and defer, &c. for a day onely, &c. as 19 Jac. Kebbs Case. A Lease at will is not a good Consideration, for the Lessee may determine it presently: But here deferring shall be intended during all the life time of the Obligor: So by the Court in our Case, it is a good Consideration, Noy. 83.

Ca. 327.
Promise
upon for-
bearance
to pay a
Debt.

Alcock against Blowfield. P. 3 Car. 1. B. R. Rot. 213. A. had recovered fifty pound against M. and then B. promised, that if A. would forbear the Execution of it, that he would pay to him fifty pound at Midsummer next, or a Hundred pound after, if it be not paid then, &c. when it should be reasonably requested; and A. avers non-payment, with a licet sapius requisitus (but doth not aver a request expressly) and recovered: And upon Error, it was agreed, that the request ought to have been expressly averred, because that was issuable, for the promise being made by a stranger, there is not any duty before request: But otherwise when the party himself which is indebted promised to pay; there a licet sapius requisitus shall suffice, because there was a duty before, and without the promise: But in the case of a stranger it is Nudum Pactum, and

Special re-
quest to be
shewed.

no

no Consideration till a request made, Noy. 95.

Scarborough against Lyrius. P. 3 Car. 1. B. R. **Ca. 328.**
 Rot. 213, L. being in a Ship upon the Sea, B.
 (who was in it) was reputed an Agent and Factor, Amongst
 borrows a Hundred pound of L. upon Bottomage; Merchants
 (that is) when the Money is paid upon the Bael of
 the Ship, and the Ship obliged to the payment of
 it: And if it be not paid at the time, &c. that he
 that lends the Money shall have the Ship; and that
 was allowed to be a good and necessary custome by
 all: And it was agreed by the Justices, that if the
 Master, Factor, Purser, or he that is reputed owner
 of the Ship borrows Money in such a manner, for
 the necessities of the Ship; that binds the owner
 of the Ship, although that the Money be not so im-
 ployed in truth, and the owner hath his remedy a-
 gainst him that he so put in trust, Noy. 95.

Jellie against Broad. M. 18 Jac. B. R. I. sells **Ca. 329.**
 goods to B. for Two hundred pound, and in Consi-
 deration of that Bargain, B. promiseth that he
 will not exercise the Trade of a Mercer in such a
 Millage, &c. But after B. used it there, and I.
 brought an Action upon the Case, and resolved by
 the Court, that it well lies; for it was a voluntary
 promise for a good Consideration, and is restrained
 to a place; otherwise if it had been a general re-
 straint, or upon a co-action, or without a Conside-
 ration, it had been void; for it is said by all the
 Justices, that that Condition, or general restraint,
 &c. is against the Law and Liberty of a Subject,
 by Magna Charta, cap. 38. And contrary to the
 Common Law, Noy. 98. See case 386.

Conside-
 ration sale
 of goods
 for so
 much.
 Promise
 not to use
 his Trade.
 Promise
 against
 Law.

Murton against Buxley. 18 Jac. In Exchequer **Ca. 330.**
 Chamber, in an Action upon a promise to pay ar-
 rearages of Rent, upon an Infimul computaverint,
 when

Infimul
 computave-
 runt.

Insimul
computa-
verant, for
arrearages
of Rent.
Request.

When he should be thereunto requested; and hath not expressly alledged a request, and yet adjudged good, for the arrearages are due before the request; and an Action of debt lies for them: And also the bringing of an Action is a request sufficient: That was moved in arrest of Judgement, yet Judgement was for the Plaintiff: But otherwise, if it were to do a Collateral thing, which was not a present duty, Noy, 98.

Carrier
promise
to carry
goods safe
and suffers
them to
be spoiled

C331. Bradley against Benny. M. 4 Jac. B. R. Error upon a Recovery in an Assumpsit in Bristol Court; Where the Plaintiff had counted that the Defendant was a Common Carrier by Boat from Bristol to Gloucester; and that he had delivered two Bats of Piscadel to the Defendant, who assumed to transport it, pro quadam pecunie summa: The Defendant his assumption aforesaid not carrying, &c. The aforesaid Bats so long and carelessly kept, that one of them ran out; and the Defendant pleads not guilty; and the Issue found against him: And now upon Error; by the Court, the Issue was erroneous, for it ought to have been Non-Assumpsit; for the Plaintiff replied upon that chiefly, Noy. 114.

Promise
to an Inn-
keeper to
save him
harmless
for enter-
taining a
prisoner.

Ca. 332. Fletcher of Oately against Harcat. In an Action upon the Case, and counts, whereas the Defendant had arrested one Battersly by a Commission of Rebellion, issuing, as he said, out of the Court of the Lord President of the North: And whereas the Plaintiff doth, and hath kept a Common Inn in Oately, by the space of Five years, and entertained men: The Defendant requested the Plaintiff to keep the said Battersly in his Inn, the space of a night, as prisoner, and he would save him harmless: And shews that he had kept him that night: And
Battersly

Batterfly afterwards brought an Action of false Imprisonment against him for it, and that in defence thereof he had expended Ten pounds, and had required the Defendant to save him harmless, and he would not, whereupon Non-Assumpsit pleaded, it was found for the Plaintiff, and Judgement was thereupon given by the Court for him, Hurton. 55.

If I have a Suit in Chancery against another, Ca. 333. and a decree, and am suing out an Attachment for contempt, by not performing of it, and he, in Consideration that I will not take forth the Attachment, and do some other things that were not valuable, doth promise to do some things to me; this is a good Consideration to ground an Action upon the promise, for to stay a Suit in Chancery, may be a good Consideration to make a promise obligatory, Croo. 1. last publisht. 847, 148. Coulston and Carr. M. 43. & 44 Eliz. B. R. See case 338.

To forbear a Suit, a good Consideration.

Custom of Granage in London, is, That the Mayor shall have the Twentieth part of the Salt brought into the Port of London by an Alien; an Alien doth bring Salt, and he for a certain sum of Money agreed between the Mayor and him, assumes to satisfy him for his Granage: And in an Action upon the Case he declared, that for so much, being the Twentieth part, he had not satisfied, &c. And it was held good, as if he had said, he did not satisfy the Twentieth part, &c. Dyer. 352.

Promise of Granage to the Mayor of London, Pleading.

Clarke against Spurden. In a Writ of Error, to reverse a Judgement given in the Court of Common Pleas, the Case was briefly thus; A. Wife of I. S. Intestate, promiseth to B. to whom Administration was committed, that if he shall relinquish the Administration at the request of C. and

Consideration to relinquish Administration;

he

suffer

Confide-
ration to
relinquish
Admini-
stration.

Confide-
ration not
pursued.

Averment

Ca. 337.

Promise a-
gainst pro-
mise.

Promise
conditio-
nal.

suffer A. to Administer, that A. will discharge B. of two bonds. In Assumpsit brought by B. in the Common Pleas, he alledged that he did renounce Administration, and suffered A. to Administer, and that A. had not discharged him of the two bonds; and it was found for the Plaintiff, and thereupon Error was brought, because B. doth not shew that he did renounce the Administration at the request of C. and Rolls for the Plaintiff, in the Writ of Error. Justice Barkley (all the other Justices being absent) held, that it was Error; for Consideration is a thing meritorious, and all ought to be performed, as well the request on the part of C. as the permission on the part of B. which ought to be shewed; for perhaps B. was compelled to relinquish it in the Ecclesiastical Court, as it might be; for of right the Wife ought to Administer, and therefore it ought to have been averred, that it was at the request of C. and therefore, if it had been that he should renounce at the charge of C. it ought to be averred, that it was at the charge of C. and it was adjourned, March. 55.

Thorps Case. In an Action upon the Case upon Assumpsit, it was agreed by the whole Court, that where there is a mutual promise, viz. A. promiseth to B. that he will do such a thing, and B. promiseth to A. that in Consideration thereof, that he will do another thing; if A. bring an Action against B. and alledge a breach in non faciendo, and saith, he is ready to do the thing which he promised, but that the other refused to accept of it; notwithstanding the breach is well laid, and the Action well lyeth; for it was needless, and more than the Plaintiff was compelled to do, to shew that paratus est to do that which

which he promised; so that if there were a breach upon the part of the Defendant, it is sufficient; and if there was a breach on the Plaintiffs part, the Defendant ought to bring his Action for it, and the difference was taken by Bramston, where the promise is conditional, and where absolute, as in our case, and agreeing with this difference: it was said at the Bar and Bench, that it was adjudged, Hobb. 349. See cases 1. 97, 150, 82, 90, 306 337.

Promise conditional.

Tooley versus Windham, Assumpsit, for that there were robberies between him and the Defendant; for the profits of certain Lands, which the Father of the Defendant hath taken in his life time; and that he had purchased a Writ out of Chancery against the Defendant, to the intent to exhibit a Bill against him: upon the Return of the Writ, for the said profits; the Defendant, in Consideration he would surcease his Suit, promised to him, that if he could prove that his Father had taken the profits, or had the possession of the said Land under the Title of the Father of the Plaintiff; that he would pay him for the profits of the said Land, and said in fact, that he had proved, that the Father of the Defendant had taken the profits under the Title of the Father of the Plaintiff, and upon Non-Assumpsit, it was found for the Plaintiff. Cook, this is no Consideration, for the Suit in Chancery was unjust, and then the saying it was no good Consideration, & he sheweth not how the Father of the Defendant did hold it, viz. by Lease, or otherwise, Curia, it is no Consideration; for if the Father of the Defendant did take the profits, it is not reason his Son should answer for them

Ca. 338.

Consideration to forbear Suit, and make a proof. Promise to pay money.

Action
personal
dweth;
with the
person.

and the Suit in Chancery unjust, and the staying of it no good Consideration; but if the Suit had been for evidences, or otherwise, the staying of it had been a good Consideration; but here it is for a personal Debt, for which neither the Executor nor Heir are to answer; and Trin. 33 Eliz. it being moved again, all the Court held it no good Consideration, for he did not alledge, he was Heir, or Executor, and so had no colour to charge him; and if it had been so alledged, yet no cause to charge him for a personal Debt; and it was adjudged for the Defendant, Croo. 1. last publisht. 206, 207. See cases 39. 387, 312, 237, 280, 338.

Ca. 339.

Consideration, to pay the whole debt they were joyntly bound to pay.

Promise to pay him half again.

Consideration valuable.

Bagge against Slade. Pasch. 14 Jac. B. R. Action upon the Case in the Town of Yewel in Com. Sumnerfset. The Case, Two men were bound for the debt of a Third man; the Obligation forfeited, and both of them liable to pay this: The Defendant said to the other, pay you all the debt, and I will pay you the moiety of this again; the Plaintiff paid it, and afterwards requested the moiety, the Defendant refused to pay it, upon a Non-Assumpsit, the Plaintiff had a Verdict and Judgement, upon which they brought a Writ of Error, and assigned for Error, that the Consideration was not good to raise the promise. Cook, Chief Justice, in this Case, and in the Declaration, here is a good Consideration set forth; the parties upon Contract here shall bind him, he hath no remedy for the money paid, but when this is paid, this is a good Assumpsit grounded upon a good Consideration for repayment of the moiety to the Plaintiff. Houghton, Justice, notwithstanding this, he is still left in danger of the first bond. Cook, I have never heard otherwise, but when one draws Money from another,

ther, that this should be a good Consideration to raise a promise. Dodderidge, Justice: If the Consideration puts the other to charge, though it be no wayes at all profitable to him who made the promise, yet this shall be a good Consideration to raise a promise. Cook agreed with him hereln: Also, if a man be bound to another by a Bill of a Thousand pound, and he pay him Five hundred pound in discharge of this Bill, the which he accepts of accordingly, and upon this promise to deliver up the Bill of a Thousand pound; this Five hundred pound is no satisfaction of the Thousand pound; but yet this is good and sufficient to make a good promise, and upon a good Consideration, because he hath paid Money, viz. Five hundred pound; and he hath no remedy for this again. They moved also, that the entry of the Judgement was not good, being thus *ideo consideratum fuit ad tunc & ibidem, hic ad eorund. Cur. qd. præd. cum querens recuperet.* The whole Court agreed the Judgement to be well entered, and that the Consideration here is good, and the Rule was quod Judicium affirmetur. See cases 4. 39, 63, 82, 84, 172, 175.

King and Robbinson. Mich. 29, 30 Eliz. B. R. Assumpsit, The Plaintiff declared, that he did assume to do such a thing, &c. and upon Non-Assumpsit, it was found that he did assume to do that, and another thing, which he hath not performed; for where the Plaintiff declareth, that in Consideration of one thing the Defendant assumed, and the Jury find, in Consideration of that, and another thing, he assumed, &c. he hath failed in his Assumpsit; and there this case was cited; That a Woman had given to a man flattering words, equipollentia to a promise of Marriage, and by that means

Ca. 340.

Declaration naught

Uncertainty.

Deceit.

Deceit.

he delivered to her Money, and other things, he retained Council for her, and travelled in her Suits : And after she refused to marry him, and married another in deceit and fraud of the Plaintiff, he travelled all this, and part was, and part was not found. And Catlin saith, if an Assumpsit be brought

Action ill laid.

upon several things, and part onely is found for him, the Plaintiff shall have no Judgement for any part, Southcote, That the Record shew was an Action for divers deceits, which being traversed, and part found for, and part against the Plaintiff :

Pleading.

Judgement may be given for the Plaintiff, for the part, &c. But of an entire promise it is otherwise, for there failing in part, he fails in all, Croo. 1st last published. 80.

Ca. 341.

Promise for money to take & keep an Apprentice. Consideration not pursued.

Jalkern against Wright. Mich. 14 Jac. Action upon the Case declares, that the Defendant, in Consideration of Forty pound to him by the Plaintiff given, did promise to take the Son of the Plaintiff for his Apprentice, for Nine years, that he would teach him his Trade, and that during that time, he would feed him Meat, Drink, and Apparel : That the Plaintiff had paid the Forty pound ; that the Defendant had not found the Plaintiffs Son Meat, Drink, and Apparel, during the time, upon a Non-Assumpsit the Plaintiff had a Verdict : In arrest of Judgement it was moved, that the Declaration was not good, because he did not say that the Defendant had taken the Apprentice, for if he never was his Apprentice, there could be no breach of promise ; the Plaintiffs Council saith, it must be taken by intendment, that the Defendant had taken him Apprentice, and the Action brought for not finding him meat, &c. Crooke, Justice, the Verdict here doth not aid this, for if he was not his

Pleading.

his Apprentice, then there is no cause of Action. Haughton, Justice, if he hath not taken him as his Apprentice, then the Term of finding him Præ, &c. is not begun, for when he is his Apprentice he is to find him, not before, therefore he ought to have made an express averment, that he had taken him as his Apprentice. &c. The whole Court was clear, that the Declaration was not good: Judgement, quod quer. nil capiat per Billam. See cases 104, 106, 111, 143, 259, 336.

Elkin against Wastell. Mich. 14 J. C. B. R. In a Ca. 342. Writ of Error; Action upon the Case, wherein the Plaintiff set forth, that he was seized of a house, and certain Lands; and in Consideration that he should surrender the same to the use of the Defendant Elkin, and that the Defendant by promise was to give him for it Five hundred sixty pound, and if he sold the same again, the Plaintiff was to have the moiety for which he should sell the same, over and above the Five hundred sixty pound, he avers he did surrender to. Elkin (but doth not say Elkin was admitted) and that he sold the same over to another (who was admitted) for Fourscore pound more than the Five hundred sixty pound; The Action brought for the whole, but for the Five hundred sixty pound the Plaintiff was barred, because he had received it, ideo in misericordia, &c. and for the residue he recovered and had his Judgement: But they assigned for Error.

1. That the Plaintiff was seized in Fee according to the custom of the Mannor, &c. and shews not that the same was customary Land.

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2. They say that it was agreed that the Plaintiff should surrender, and do not say, he did promise to surrender. The Court. The word agrees, implies a promise.

3. They do not shew that the Defendant was admitted. The Court over-ruled this also, because they do not say he was to be admitted.

4. That for one part of the promise the Plaintiff was in misericordia, and for the other, that the Plaintiff shall recover, that this is but one promise, there the Plaintiff ought to have barred for the whole, or to have recovered, and not have been in misericordia for any part, Judgement affirmed by the Whole Court, See Cases 68. 125, 126, 242, 377.

Ca. 343. Davenport against Davenport. Mich. 14 Jac.
 Action upon the Case for a promise brought by an
 By an Executor, and against an Executor,
 Executor, against an Executor, of an Executor upon
 the promise made by the Testator, for the payment
 of Money lent unto him. Rich. Wood borrowed the
 Money, and promised to pay the same. It was
 urged, that this is not the general Case of an Inde-
 bitatus Assumpsit, but the promise is special, and
 the request special, limited to the Testator, or his
 Executors. Croke, Justice, if no request be made,
 he is not to lose his debt. The loan here is prior
 ordine, but by the Law they are both of them simul
 tempore. The request made the Money to be paid;
 but if no request, the debt is not lost, for his Exe-
 cutor may make the request, if a man say, licet
 postea requisitus, without any day mentioned, it is
 good; they object, that here are several promises,
 and entire damages are given; this was held good,
 and affirmed to be usual in Trespasses; and they
 are not to sever, but where part is for the Plaintiff,
 and

Request
 where ue-
 cessary.

and part for the Defendant: Judgement for the Plaintiff, See cases 2. 225, 10.

Methold against Peck. Mich. 1. Car. 1. B. R. Action upon the Case; the Plaintiff declares, that whereas he, and one Marshall, &c. were bound in an Obligation unto the Defendant of a Hundred pound, with condition to pay him Fifty two pound ten shillings upon a certain day. That the Defendant afterwards 14 Septem. 15 Jac. in Consideration that the Plaintiff would pay unto one Playford to the use of the Defendant Fifty two pound fourteen shillings upon 10 Decem. 15 Jac. &c. The said Defendant would deliver up prædictum scriptum obligatorium of a Hundred pound unto the Plaintiff cum inde requisitus esset, to be cancelled. That he did pay the Money, &c. yet the Defendant delivered not up the Bond to be cancelled, licet ad hoc sapius postea requisitus fuisset, upon a Non-Assumpsit the Plaintiff had a Verdict, and a Judgement in the Com. B. The Defendant brought his Writ of Error. The Error insisted upon, was, that the Bond was to be delivered upon request, and that it doth not appeare upon the whole record in C. B. that any request was made; this request is a material part of the promise, therefore to have been alleged that it was made. It was said that the Defendants Plea, Non-Assumpsit, is an admittance of the Request. Dodderidge, it is not; for although the Defendant makes the promise, yet here, if no request be made, there can be no breach of promise, the promise being made to be performed upon request. Crew, Chief Justice, the request here is parcel of the bargain, and the Plaintiff ought to have expressed the request to have been made precisely for time and place; this being a real part of

Ca. 344

Consideration, the obligee to pay his debt to another, by appointment of the Obligee.

The Obligee to deliver up the obligation.

Request where necessary.

the

the promise, ought to be really done to make a good breach of promise: The whole Court agreed it, that it was erroneous; Judgement was reversed, Hutton. page 73. Owen. Rep. 112. See for Request Case 10.

Ca. 345. Cagle against Rogers. Mich. 1. Cir. 1. B. R. Action upon the Case upon an Award. The submission was of all debts, trespasses, and injuries. The Arbitrators Award Twenty Marks to be paid by the Defendant to the Plaintiff, half in hand upon the Award made, the other half within six months after the date of the Award, and releases to be made by the Plaintiff; for non-payment of the Money, the Plaintiff brought his Action upon a Non-Assumpsit, had a Verdict for him: In arrest of Judgement was offered two Exceptions to the Award.

Promise
to abide
an Award.

Arbitre-
ment.

1. They have awarded a Release of all debts, duties, trespasses, and demands; and this is more than the submission, and so avoid Award.

2. They awarded the Money to be paid within such a time after the date of the Award, which was made the same day of the submission. Dodderidge, Justice; The award is good, and well made, and according to the submission, for the word injury in the submission is a large word, and general, and comprehends all manner of wrongs, all demands. For the second, The submission here doth not compel this Award to be in writing, and where it is not in writing (as it may well be by word) it shall be taken to be from the time of the making or giving up of the Award, if no date, it shall be taken from the time of the delivery of the same: The whole Court agreed here for the Plaintiff, Judgement for the Plaintiff, See cases 16, 18.

Pickas

Pickas and Guile. T. 6 Jac. B. R. Assumpsit, The Ca. 346.
 Plaintiff declares, that the Defendant, in Consideration the Plaintiff adtunc & ibidem, at request of the Defendant, deliberavit to the Defendant four broad Cloths, and two packs and a half of Wool of the Plaintiffs, to the value of Fifty pound, assumed the same broad Cloths, and packs of Wool to the Plaintiff, on request to re-deliver: The Plaintiff saith in fact, that he had delivered them to the Defendant, yet had not the Defendant, though he was such a day, &c. requested, re-delivered them: And upon Non-Assumpsit pleaded, was found for the Plaintiff: And Yelverton shewed in Arrest of Judgement, that there is not any Consideration laid in the Declaration to draw a promise from the Defendant, for the Defendant had not any benefit by the Cloths, &c. but Nudam Custodiam, which is rather a charge than benefit, for the Defendant cannot use them, and therefore ought to be resembled to the 9 Ed. 4. where delivery of Evidences to the true owner, is not any Consideration, for of common right the owner ought to have them; quod fuit concessum per totam Curiam, & nil cap. per Billam entred. Yelverton. 128.

Consideration, delivery of goods, Promise to re-deliver them.

Consideration not valuable.

Croft and Wallbanke. T. 6. Jac. B. R. Assumpsit, Ca. 347.
 The Action is brought against the Defendant as Administrator of I. S. during the minority of D. and Issue joyned, and found for the Plaintiff; and alledged in Arrest of Judgement, that the Declaration is not good, quia non constat, whether D. were at the time of the Action under Seventeen years, at which time the Authority is not determined; but adjudged not necessary to be shewn;

Against an Administrator.

Infant.

1. Because the Plaintiff is a stranger to the power given to the Defendant, and cannot know of what age D. the Infant is.

2. Because the Defendant by joining Issue, hath admitted that his power continues: for otherwise the exception taken by the Plaintiff would be pleaded by the Defendant in discharge of himself, for it lies properly in his notice, and is for his benefit to alledge it, Yelverton. 128.

Ca. 348.

Consideration of money.
Promise to deliver Todds of Wooll, at the price agreed upon.

Declaration.

Pleading.

Ragnay and Alexander. M. 3 Jac. B. R. Assumpsit, The Plaintiff declares, that whereas the Defendant was possessed of Seventeen Todd of Wooll, and whereas Colloquium fuit between them for Fifteen Todd of the Seventeen, to be chosen by the Plaintiff, the Defendant, in Consideration of Six pound to be paid at such a day, &c. promised to deliver to the Plaintiff prædictas Fifteen Todd of Wooll, and saith in fact, how he at the day was ready to pay to the Defendant Six pound, yet hath not the Defendant delivered to the Plaintiff the Fifteen Todd of Wooll, to his damage, &c. And upon Non-Assumpsit pleaded, was found for the Plaintiff: But the Judgement was, nil capiat per Billam, because the Plaintiff had not shewed, that he had chosen Fifteen Todd out of the Seventeen; and this is as it were a precedent condition, and an Act to be performed, first by the Plaintiff, before the Defendant is obliged by his promise to do any thing, quod fuit Concessum per totam Curiam. But per Popham, Chief Justice, if the Defendant had sold one of the Todds of Wooll, before Election made by the Plaintiff, this had destroyed the Election, and been a breach of the promise: And so if the Defendant would not have suffered the Plaintiff to see the Wooll, that he might make Election, &c. Yelverton, 76.

Soprani,

Soprani, &c. Mich. 44 Eliz. B. R. Assumpfit, Soprani and Barnard brought an Assumpfit against Skurro, and declares how that it was agreed between the Plaintiffs, and one Zanches, Zanches should let unto one Welsh, one Messuage in the Dukes place for the term of Seven years; and that also it was agreed, that Welsh, during the said term, should repair the Tile and Glasse onely, and agreed, that those, and other Covenants, should be put in an Indenture between the said Welsh, and Zanches, and that the Plaintiffs shall be obliged in a Hundred pound for performance of Covenants on the part of Welsh: And further it is shewn, that the Indenture was drawn, and because there were more Covenants put in the Indenture to be performed on the part of the said Welsh, than was at first agreed, viz. that Welsh shall be obliged to all manner of reparations, Welsh refused to seal the Indenture, and the Plaintiffs refused to seal the Bond of a Hundred pound for performance, &c. they shewed moreover, that in the said house was a great wall, parcel thereof, ruinous and likely to fall within the said term, and how Skurro the Defendant, in Consideration Welsh would seal the Indenture, and the Plaintiffs the Bond of a Hundred pound, assumed and promised to the Plaintiffs, that he would maintain the said wall durante predicto termino 7 annorum; they shew, that in consideration inde, Welsh sealed the Indenture as his Deed to Zanches, and that the Plaintiffs also sealed the Bond of a Hundred pound to the said Zanches, and say in fact, that the wall of the said house fell for want of reparation within the said term, and shews in certain when, and after the sealing and delivery of the said Indenture by Welsh, and of the said Bond by the Plaintiffs

Ca. 349.

Promise, if he would seal an Indenture, he would repair, &c.

Plaintiffs, (viz. in iis verbis, durante prædicto termino 7 annorum per Indent. præd. dimiss.) by which they have forfeited their Bond, to the damage of Two hundred pounds; and upon Non-Assumpsit pleaded, found for the Plaintiffs: But adjudged, quod querentes nil capiant per Billam, because not expressly alledged in the Declaration, that Zanches did demise the said House, which was allowed a good Exception per totam Curiam; for, by any thing that appears in the Declaration, the Indenture was sealed onely on the part of the Lessee, and not on the part of Zanches the Lessor, and if the Lessee sealed his part, and not the Lessor, nihil operat; neither in respect of Interest, nor in respect of Covenants, for the Covenants depend upon the Lease, and the Bond of the Plaintiffs upon the Covenants; and if there be no Lease, there is no Covenant, and by consequence, no breach of Covenant, by which the Plaintiffs cannot in any sort be dammified; for if the Lease had been a Deed, and afterwards surrendred, all the Covenants and Bonds for performance of them had been void also, Yelverton. 18.

Ca. 330.

The Hostlers Case. T. 3 Jac. B. R. In an Action upon the Case upon an Assumpsit, the Plaintiff declares, and shews himself to be an Hostler, and that the Defendant brought his Horse to him, and agreed to give Six pence Libery for a day and a night; and because the Horse had been there so many days and nights, which amount to Twenty pound, the Plaintiff brought his Action, and declares, licet sepius requisitus sans, alledging a request in fact, and adjudged good; for where the ground of an
Act

Action is for a debt, in which case the Law induceth a promise, there the request is not Assuable, nor parcel of the Consideration; otherwise where the Action is founded upon meer Collateral matter, and not upon a duty, for there the request is assuable, and ought to be expressly alledged; and although the Agreement was for Six pence day and night, and the Plaintiff hath joynd here many days and nights, which amount to Twenty pound, and demands recompence upon the promise accordingly, yet it is good, for the Plaintiff shall not be compelled to bring his Action for every Six pence, but the promise is time in it self, viz. to pay all that the Horse takes secundum ratam Six pence night and day: And is not to be compared to a single Bond, of which the Action lies not, till all the days are past, for the writing is simple and intire. And in this case it was said by Popham, Chief Justice, that if a man bring his Horse to an Inn, and leave him there in the Stable, without any special Agreement, but to pay, the Inn-holder is not bound to deliver the Horse till the party and owner hath defrayed his charge for the Horse, but may justifie the keeping the Horse for his food and keeping; and after the Horse hath eaten as much as he is worth, the Inn-holder, upon reasonable pricing, may sell him, and is a good sale in Law: But in the case above, though the Horse hath eat out his double value, the Inn-holder cannot sell him; for he hath relied upon the promise to pay Six pence day and night, and upon this he ought to rest. So if a Taylor hath any Apparel to make, and doth it accordingly, he is not constrained to deliver them, till he be paid for the making of them; but although in this

Taylor.

case he may detain them till he be paid, yet for default of payment, he cannot sell them, as in the other case the Horse might be; the reason is, because the keeping the Horse is a charge, because he eats, but the keeping the Apparel is not, quod toto Curia concessit. Yelverton, 66.

Ca. 351.

Promise
that A.
shall have
all the
Iron
made, &c.
at such a
rate.
A. promi-
ses to take
it at that
rate.

Recipro-
cal pro-
mises.

Betisworth and Campian. T. 6 Jac. B. R. Assumpsit, The Plaintiff, as Executor of I. his Father, declares against the Defendant, that whereas there was Communication and agreement, that the Defendant should have all the Iron made in such a Furnace, paying according to the rate of Forty Shillings per Tun, and that the Testator assumpsit to the Defendant, that he should have all the Iron made in this Furnace, in consideratione inde, the Defendant promised to the Testator, to pay secundum ratam aforesaid; and sheweth, that the Defendant had had as many Tuns, and as many pounds of Iron, as amounted, according to the rate aforesaid, to so much Money, and confesseth satisfaction of part; and a Hundred and nineteen pound to be behinde unpaid to the Testator, and the Plaintiff: The Defendant pleads payment, and upon this Issue, found against the Defendant, to the damage of Two hundred pound, and Judgment was given accordingly; for though the Testator promised that the Defendant should have all the Iron, so that the Consideration of each part was the mutual promise of the one unto the other: although the Testator now being dead, the Defendant cannot have an Action against the Plaintiff as Executor upon breach of the Testator, yet the promise ex parte the Defendant continues, Yelverton.

133. m. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Ca. 352.

Totem and Poulter against Per ict. M. 8 Jac.

B.

B. R. Assumpsit, the Defendant grants to the Plaintiff a Thousand Trees in such a Wood to be cut within Threë years after the grant, and after they were agreed, when the Plaintiffs had cut some of the Trees; that they should cut no more during the Threë years; and that the Defendant had Licenced them after the Threë years, to cut as many Trees as amounts to the full number of a Thousand, and so; that the Defendant hindered them after the Threë years to cut Trees; they brought the Assumpsit, and declare, and shew forth the grant; and that in Consideration the Plaintiffs would forbear to cut any more Trees, till after the Threë years, the Defendant promised to give licence to the Plaintiffs to cut as many Trees there after the Threë years as amounts to a Thousand Trees, and alledges in fact, that at time of the promise they had cut but Eight hundred, & non amplius, and that they confiding on the promise, forbore to cut any more within the Threë years, and how after the Threë years the Defendant hindered them to cut the residue, which make a Thousand Trees, to the damage, &c. The Defendant pleads, that before the promise supposed to be made by the Defendant, the Plaintiffs had cut a Thousand Trees abque hoc, that at time of the promise they had cut but Eight hundred Trees onely, &c. And upon this the Plaintiffs demur; and adjudged against the Plaintiffs; And the Traverser adjudged good per totam Curiam, for the Plaintiffs by alledging the cutting of Eight hundred Trees onely in their Declaration, which is matter issuable, hath given advantage to the Defendant to Traverser in manner as he hath done, for every matter indeed alledged by the Plaintiffs, may be traversed by the Defendant,

Consideration, forbearance to cut Trees, promise to licence the cutting of more;

Traverser

Pleading. and the Defendant, by way of Travers, may answer the matter alledged in the same words as the Plaintiffs have alledged them, and therefore the Plaintiffs by their demurrer upon the Bar have confest the cutting of a Thousand Trees, which was their full bargain at first, and by consequence there is no Consideration whereon to ground the promise, Yelverton. 195.

Ca. 353.

In Consideration
one in execution be delivered, that the money shall be brought in Court.

Unlawful consideration.

Martin and Blithman. H. 8 Jac. B. R. Assumpsit D. Holman was in Execution in Plimouth, for Thirty one pound at the Suit of D. which was recovered there before the Major, &c. Blithman came to the Gaoler Martin, and promised, that on Consideration he would let and suffer Holman to go at large, the Thirty one pound should be brought into Court by Holman by such a day, to satisfy D. and that he would save Martin the Gaoler harmless of this enlargement, D. recovers against Martin upon escape, and afterwards Martin brought an Assumpsit against Blithman, upon the promise, and declares ut supra, and adjudged against the Plaintiff, for the Consideration is against Law, viz. to suffer one in Execution to escape the same Law, per Curiam, if there had been a condition upon an obligation, to save the Gaoler harmless of an escape, maketh the Bond void, because a condition against Law, per totam Curiam. Yelverton. 197.

Ca. 354.

Indebitatus Assumpsit.

Goodwin and Willoughby. In Action upon the Case, declared, that where the Husband of the Defendant super compotum inter eos indebitat, in so much to the Plaintiff, assumed to pay him, after dyed, the Defendant being his Wife, and having notice of the promise, and that the Plaintiff would sue, &c. entreated the Plaintiff not to sue, till such

a time, &c. and saith further, that she is to receive so much of I. S. and promises him, if he will forbear, as he hath promised, till, &c. that if she receive the same Money of I. S. that she will pay it to him; it seems a good Assumpsit, Latch. Rep. 111. 143. and Noy. 81.

Legates Case. Trin. 3 Car. 1. A Suit was brought between two; the Defendant doth promise to the Attorney of the Plaintiff; on the part of the Plaintiff (Anglice, on the behalf of the Plaintiff) that he will pay, &c. in Consideration, &c. And the Plaintiff brought an Action upon the Case, and declared specially as before, and not generally of a promise made to him, yet it was adjudged good, the one, or the other way, Latch. Rep. 206.

Assumpsit to another to my use.

Godwin against Barkin. Trin. 1652. Banc. Sup. Ca. 356. A Writ of Error was brought to reverse a Judgement, given in an Action of Trespass upon the Case in the Court of Burton upon Trent, wherein the Plaintiff declared, that the Defendant, in Consideration that he was indebted unto the Plaintiff in Twenty pound, did assume and promise to deliver divers Cattle to I. S. to the use of the Plaintiff, and for non-performance of this promise, he brought his Action, and had a Verdict and a Judgement, but the Judgement was reversed, because the Court held, that here is no Consideration expressed, which can relate to the discharging of the debt of Twenty pound, and so the promise is but Nudum Pactum, and the Plaintiff is, notwithstanding the promise, at liberty to bring his Action against the Defendant for the promise, Stiles. Rep. 30.

Consideration of a debt due, invaluable Promise to deliver Cattle to another, to the use of the Debtee.

By Roll, Chief Justice, Mich. 1653. Banc. Ca. 357. Reg. If one make a Lease for years, of Land,

Action for rendering Rent, and Action lies upon this promise, if the promise was made at the time of the Lease made; but in this Action brought this promise must be expressly averred to be so. Stiles. Rep. 400.

Ca. 358.

Promise of money to marry another.

Greenlin and Bawdit. Hill. 1654. Upper Bench brought an Action upon the Case against Bawdit, and declared, that the Defendant, in Consideration that he will marry such a Woman, did assume and promise, that upon his marriage with her, he would pay the Plaintiff Fifty pound, and would also give unto him yearly one Firkin of Eggs, and a Flitch of Bacon, during the life of the Plaintiff, and upon a Nihil dicet, the Plaintiff obtains a Judgement, and upon a Writ of Enquiry of damages executed, great damages were found for the Plaintiff: It was moved in Arrest of Judgement, yet the Chief Justice over-ruled the exceptions, and to the last answered, the Record is huc usque, and so it is certain enough; therefore let the Plaintiff have his Judgement, Stiles, 404.

Ca. 359.

Against an Executor. Consideration of forbearance. Promise to pay.

Hayward and Ducker. Hill. 1654. Banc. Sup. Hayward brought an Action upon the Case against Ducker, that was Executor to another, and declares, that whereas the Testator did owe unto the Plaintiff such a sum of Money, which the Plaintiff intends to sue the Defendant for, the Defendant did assume and promise to the Plaintiff, that if he would forbear to sue him for the Money, and would suffer him to go unto the Country, he would pay the Money, and for breach of this promise, he brought his Action, and obtains a Verdict: It was moved in Arrest of Judgement, that there appears no Consideration to ground the promise upon in the Declaration, yet Judgement was given after Objections to it for the Defendant, Nisi, Stiles, 405.

Nor-

Norman and Smag. Hill. 1654. Banc. Sup. An Ca. 360.
Action upon the Case was brought upon two pro-
mises, viz. to pay so much upon a certain day; and
Secondly, to save the Plaintiff harmless; upon
Issue joyned, and a Verdict found for the Plaintiff,
it was moved in arrest of Judgement, that the
Plaintiff did not shew how the Defendant hath not
saved the Plaintiff harmless, but only said gene-
rally, that he did not save him harmless, and so he
may bring another Action for the same thing: The
Court held, that it was not good to say generally,
that the Defendant did not save him harmless, but
he ought to shew in what particular. See Cases 244.
307. 316. 332. 48. 64. 155. 183. 188. 193. 237.

Two pro-
mises to
pay money
and save
harmless;

Pleading.

Bunniworth and Gibbs. Trin. 1654. Banc. Reg. Ca. 361.
A Writ of Error was brought to reverse a Judge-
ment given in the Court at Peterborough, upon
Action upon the Case upon a promise, wherein the
Plaintiff declared, that in Consideration that the
Defendant had received Five pound, which was
due by the Plaintiff unto the Defendant, upon an
account made up betwixt them at such a time, the
Defendant did assume and promise to pay him such
a sum of Money, when the Defendant shall set up
an Apothecaries Shop in Peterborough, if the
Plaintiff be then living there: The Error assigned
was, there was no Consideration. Another Objec-
tion, that the Plaintiff doth not aver his Living in
Peterborough, where the Defendant set up an Apo-
thecaries Shop: This is a good Exception; Roll,
Chief Justice, therefore let Judgement be reversed,
Nisi. Stiles. 419.

Conside-
ration of
five
pound of
due debt
to him.
Promise
to pay
money,
when he
shall set
up an A-
potheca-
ries shop
in P
Conside-
ration not
valuable.
Pleading.

Lord and Michel. Trin. 1654. Banc. Reg. Ca. 362.
Writ of Error brought to reverse a Judgement gi-
ven upon Nihil dicet in the Common Pleas, in an

Action

Promise
to pay, up-
on forbear-
ance to
sue.

Action upon the Case upon an Assumpsit, the Consideration, that if the Plaintiff would forbear to sue the Defendant, that he would pay him such a sum of Money; two Errors were assigned to reverse the Judgement; but after pleading, Judgement was reversed, Nisi, &c. Sti es 420. See Cases 26. 27. 70. 71. 359.

Ca. 363.

Promise
to pay
such fees
as shall be
due to
him as
Solicitor.

Banks and Prat. Trin. 1654. Banc Reg. A Writ of Error was brought to reverse a Judgement, given in the Common Pleas for an Attorney in an Action upon the Case, grounded upon a promise, that the Defendant would pay him such Fees as should grow due to him by prosecuting such a Suit for him in the Common Pleas, and another in the Chancery, as his Solicitor, after Errors assigned: The Court bid shew cause why Judgement should not be affirmed, Stiles. 420.

Ca. 364.

Promise
on forbear-
ance to
sue, to
pay the
debt.

Boyle and Scarborough. Hill. 1655. Banc Reg. Stiles page 440. Scarborough brought an Action upon the Case in the Common Pleas, against Boyle upon a promise, that whereas his Son William did owe unto Scarborough five hundred pound, and Scarborough did intend to sue a *nè exeat* Regnum against him, till he might recover his debt, Boyle did promise, that if he would forbear to sue out a *nè exeat* Regnum against his Son William, he would pay the debt; the Plaintiff obtains a Judgement upon a Demur, whereupon Boyle brings a Writ of Error to reverse this Judgement: But after pleading; Roll, Chief Justice, let the Judgement be affirmed.

Ca. 365.

Fowke and Prescot. Trin. 1655. Banc Reg. Stiles. 458. Fowke brought an Action upon the Case upon a promise against Prescot, Prescot a Coach-man, by careless driving of his Coach, broke a Pipe of Wine

Wine of Fowks, which lay in the Street, whereby much of the Wine was lost; Fowks apprehends the Coachman, who thereupon promisseth, that if he would forbear to sue him for it, that he would satisfy him for it; upon breach of promise Action pay for a is brought, and obtains Verdict: It was moved in arrest of Judgement; but after, Glyn, Chief Justice, let the Plaintiff have his Judgement.

Manell and Mackalige. Trin. 1655. Banc. Reg. Ca. 366. Stiles. 158. Manell brought an Action upon the Case against Mackalige, and declared, that having an intent to enter Action against the Defendant, and to arrest him at such a time, the Defendant, in Consideration that the Plaintiff would forbear to arrest him at that time, did promise that he would put in Bail to him at any time, after which he shall enter his Action against him, and hereupon brings his party. Action for non-performance, and after a Verdict for the Plaintiff, it was moved in arrest of Judgement: But Glyn; let the Plaintiff have Judgement.

Thomas and—Mich. 1655. Banc. Reg. Stiles. Ca. 367. 461. One promised to the Father, that in Consideration he would surrender a Coppyhold to the Defendant, that he would give unto his two Daughters Twenty pound a piece, and after Verdict and Action upon the Case was brought by one of the Daughters for breach of promise: It was moved in arrest of Judgement, but yet Judgement was for the Plaintiff, Nisi, &c.

Culliar and Jermin. Mich. 1655. Banc. Reg. Stiles. 463. Culliar brought an Action upon the Case upon a promise, and declared, that the Executors of the Defendant, in Consideration that

Against an the Plaintiff would marry such a Woman, did promise that he would leave him half his Estate at Executor. Upon a his death; upon a Verdict found for the Plaintiff, Promise of the Testator it was moved in arrest of Judgement; but Glyn, Chief Justice, disallowed the Exception, and gave Judgement for the Plaintiff.

of marriage. Lance and Blackmore, Mich. 1655. Banc. Reg. Ca. 369. Lance, Executor, brought an Action upon the Consideration to enjoy Land. Promise to pay money, Consideration the Testator would suffer the Defendant to enjoy such a Close of Land, the Defendant did assume and promise to pay Fifty three shillings, for the Rent thereof so long time as he should enjoy it, and for so much Rent due for it; for so long time in the Testator's life time, and for so much Rent due since his death, he brings his Action upon Non-Assumpsit pleaded, a Verdict was found for the Plaintiff, and entire damages given: It was moved in arrest of Judgement, adjudged after that upon a special promise of the party to pay it, as our Case is, it will lie, Stiles. 463.

Ca. 370. Consideration, that a man had ended differences. Promise to pay money.

Consideration past.

Hardress and Proud. Mich. 1655. Banc. Reg. Hardress brought an Action of the Case against Proud, and declared, whereas he at the request of the Defendant had taken pains to reconcile differences betwixt the Defendant and I. S. and others, the Defendant did assume and promise to the Plaintiff, to pay unto him a Hundred pound at a certain day, and for non-payment he brings his Action; and upon Non-Assumpsit pleaded, and a Verdict found for the Plaintiff: The Defendant moved in arrest of Judgement, no Consideration to ground the promise upon, viz. that in Consideration that the Plaintiff had taken pains, &c. he did promise, &c. this is a Consideration executed, and not sufficient

cient to ground the promise upon; as in Hunt, and Dyers Case, for proof. Secondly, what pains he took is not shewed, so not to be known whether his pains were sufficient or not. Thirdly, he took pains to reconcile, &c. and others, not shewing who they were, the two last were overruled; and Judgement for the Plaintiff, Nisi. Stiles, 465.

Laighton against Haverley. Hill. 7 Jac. B. R. Action upon the Case. Haverley promised I. S. that if he did borrow of one Powell a Hundred pound, he would repay this to him upon the same day, and on the same Conditions that they between them should agree upon; I. S. borrowed the Money, agreed to pay it at a day certain, before which day I. S. dyed, and makes Laighton his Executor, the day passeth, the Money not paid. Powell sues Laighton, and recovers. Laighton, as Executor to I. S. sues Haverley upon this promise, and had Judgement in C. B. Haverley brings his Writ of Error in B. R. and assigns for Error, that no notice was alledged to be given to him before the day what agreement was made between them. Fleming, Justice, this difference is to be observed, that where a penalty is to be recovered, there notice is requisite to be given, but where damages are only to be recovered, there no notice is to be given, as in Bond, where notice is a part of the Action. In an Action of the Case upon a promise, he is only to recover damages, and the party hath sufficient notice given him by the Declaration against him; if notice had here been given to him, he must have paid the principal with the damages, but here there was no notice; therefore he shall pay the principal, not the damages. By Rule of Court the Judgement affirmed, See for notice, Case 10,

Ca. 371.

Consideration of loan of money to another.

Promise to pay it.

Notice to be given.

Ca. 372.

Promise
to pay for
a Cure.

Infant.

Dale against Copping. Trin. 18 Jac. Action upon the Case, declares, That if the Plaintiff would cure the Defendant of the Falling-sickness, the Defendant would pay him so much; That he did cure him, and he did not pay him; the Defendant pleads Non-age, and demanded Judgement of the Court, whether the Plaintiff shall have this Action. Williams, Justice, clearly the Action will lie; for this thing is as necessary for him, as Meat, Drink, and Apparel; therefore his promise is as binding for this as the other, though under-age; The whole Court was clear of opinion, that the Action was well brought, but left it to the Plaintiff to demur to the Plea; then 'twas agreed by the parties, Bulstr. 1. part 39.

Ca. 373.

Conside-
ration,
forbear-
ance.
Promise
to pay.

Baker against Jacob. Mich. 8 Jac. Action upon the Case, declares, That the Defendant, in Consideration the Plaintiff would forbear him pro aliquo parvo tempore, viz. for some fortnight, or thereabouts, he the Defendant would then pay him; That the Plaintiff did forbear him two years, yet he hath not paid; upon a Non-Assumpsit was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good for want of good Consideration to maintain the Action; it being onely to forbear him pro parvo tempore, which is altogether uncertain, so void. Yelverton, Justice, The viz. hath well explained the matter pro aliquo parvo tempore, viz. or Anglice for some fortnight, and set forth, that he had forboren him two years, this is certain enough, and good: Another exception was, that the Plaintiff bringing his Action against the Defendant as Executor, did not aver Assets; the whole Court disallowed of this also: So the opinion of the whole Court

Chap. 15.
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Chap. 15. for Contract, and Assumpsit. 651

Court clearly was, that the Declaration was good;
Judgement for the Plaintiff, Bulstr. 2. part 41.

Gabbe against Mosse. Mich. 8 Jac. B. R. Action Ca. 374.
upon the Case, declares, That the Defendant pro-
mised to pay the Plaintiff such a sum of Money
when he should return from London, that he did
return from London, but did not pay the Money:
upon a Non-Assumpsit, the Plaintiff had a Verdict,
and Judgement in C. B. upon which was brought
a Writ of Error; the Error assigned was, that
there was no special Request laid; That there
was no notice laid to be given to the Defendant at
the Plaintiffs return, that being the time of pay-
ment, which the Defendant could not know with-
out notice: The whole Court agreed, that notice
ought to have been laid in the Declaration, for that
it was necessary in this case, because the matter
was to be done between the parties, the payment of
the one upon an Act to be done by the other; other-
wise where it is to be done by a stranger; that the
Declaration was not good, and the Judgement for
this cause erroneous: And for this the Judgement
reversed, Bulstr. 1. part 44. See Cases 10. 34, 48,
52.

Promise to
pay money
upon his
return
from Lon-
don.

Request to
be made.

Smith against Jones. Mich. 8 Jac. Action upon
the Case: Thus, a man deviseth by Will unto his
Son Seven pound, makes his Wife Executrix,
and dyeth; afterwards she taketh another Husband,
by this account the goods comes to his hands, the
Wife dyes, the Husband afterwards makes his pro-
mise, in Consideration that he had the goods, being
more than would satisfy the Debts and Legacies,
if the Plaintiff, being the Son and Legatee,
would forbear to sue him for such a time certain,

Ca. 375.
Promise
to pay a
Legacy
upon a
forbear-
ance to
sue by one
that is no
Executor.
Conside-
ration not
valuable;

he, the Defendant, would pay him the Seven pound: That the Plaintiff did forbear him the time, that he did not pay the Money: The Defendant pleads, his Wife was dead before he made this promise to the Plaintiff, and therefore ought not to be charged by his promise to pay the Seven pound, the Plaintiff demurs to this Plea. Fleming Chief, Justice, the next of kin, to the Wife, may have Letters of Administration, and so take the goods out of the Husbands hands; and this promise was made after the death of the Wife, therefore no good promise: If the Husband be sued for these goods in the Ecclesiastical Court, he hath a good Plea in Bar, that he is ready to deliver them unto the Administrator: The whole Court agreed against the Plaintiff, Judgement was given for the Defendant, quod querens nil capiat per Billam.

Ca. 376. Owen. 133. Croo. 2. 257. Bulstr. 1. part 44. Mich. 8. Jac. Brickendell, Plaintiff against ——— Action upon the Case. A promised unto B. that if he would deliver unto him his two fat Oxen, intra breve tempus, that he would then pay him a Hundred pound for the Oxen, intra breve tempus: That the Plaintiff did intra breve tempus deliver the two Oxen to the Defendant, that he had not paid the Hundred pound intra breve tempus: Upon a Non-Assumpsit was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, for the incertainty therein, it is not known what time shall be said to be breve tempus: The whole Court agreed clearly, that the Declaration was not good; Judgement quod querens nil capiat per Billam. See Cases 105. 368.

Ca. 377. Thorner against Field, Pasch. 9 Jac. Action upon

on the Caſe, declares, That the Plaintiff ſold a Horſe to another for five Marks; the Defendant being preſent, promiſed, in Conſideration of the ſale, if the party that brought the Horſe did not pay, he, the Defendant, would ſee the ſame paid; upon a Non-Aſſumpſit the Plaintiff had a Verdict: In arreſt of Judgement it was moved, that the Declaration was not good, becauſe it is not ſaid, that the ſale was by the Defendants requeſt, and the promiſe is ſaid to be after the ſale was paſt and perfect, ſo no Conſideration to ground the promiſe. If a man ſay, in Conſideration you will deliver goods to another, I will ſee you paid; or what you deliver to him, I will ſee you paid, it is good; but here, as the Caſe is, it is not good: So the whole Court agreed, that Judgement ſhould be for the Defendant, quod quer. nil capiat per Billam. See Caſes 259. 271, 287, 384, 397.

In Conſideration a bargain paſt, Promiſe to pay the money, if the buyer did fail to do it,

Wernſton againſt Webb. Paſch. 10 Jac. Action upon the Caſe, declares, That I. S. being poſſeſſed of goods, makes his Will, and makes the Plaintiff his Executor: The Defendant, in Conſideration that the Plaintiff would forbear to joyn in the probate of the Teſtament, & relaxaverit totalem executionem of the Will of the Teſtator, the Defendant would, when the Plaintiff came to ſuch a place pay him Eleven pound: That he did come to the place ſuch a day, he did forbear the probate of the Will, and had made the Release; but the Defendant had not paid the Eleven pound; upon a Non-Aſſumpſit, and a Verdict for the Plaintiff: In arreſt of Judgement it was moved, that the Declaration was not good, for that for one Executor to reſign to another; this was no benefit, but a truſt, and ſo the ſame is no good Conſideration:

Ca. 378.

Conſideration to reſign to an Executorſhip. Promiſe to pay money.

The

The Court agreed it a Consideration sufficient; Judgement for the Plaintiff, See Cases 183. 336, 338.

Ca. 379.

Amongst
merchants

Dockley against Bury. Pasch. 10 Jac. Action upon the Case declares, That the Plaintiff having two parts in a Ship, which was going to France for Stones, he did grant unto the Defendant the moiety of his gain, which he should have in this Voyage, and in Consideration of this, the Defendant did assume, that he would be at the charge of the moiety of the losses which the Plaintiff should sustain in the same Voyage, and did likewise promise to pay so much as should amount unto the moiety of the losses upon request: The Plaintiff avers his losses to be Forty pound, and more, so that the Defendants part of the losses, as appears upon the Account, amounts to Two and twenty pound one Shilling, which he hath requested, but the Defendant not paid; upon Non-Assumpsit, the Plaintiff had a Verdict: In arrest of Judgement it was moved, that the Declaration was not good, for the incertainty of the Consideration, for that which was granted, was onely a possibility, and so uncertain, Williams, Justice, if there was at the beginning a possibility, and afterwards it is reduced to a certainty; this is clearly a very good Consideration: The Court agreed it; Judgement for the Plaintiff, See case 46.

Ca. 380.

Consideration, to
take care
of a sick
man.

Crips against Sir Henry Baynton. Pasch. 13 Jac. Action upon the Case. The Plaintiff set forth, that such a one being a friend of the Defendants, and coming to the House of the Plaintiff in Cirencester, it being an Inn, and there agrotus: The Defendant came thither, and said to the Plaintiff, provide for him such necessaries as he shall want,

want, & pro omnibus talibus necessariis, he did then promise the Plaintiff bene solvere: That the Plaintiff had provided for him necessaries amount-
 ed to such a sum, which he had demanded of the Defendant, yet he did not pay; upon a Non-Assumpsit, the Plaintiff had a Verdict: An arrest of Judgement it was moved, that the Declaration was not good, because he had not shewed what necessaries in particular he had provided for him. Cook, Chief Justice, he hath shewed the matter plainly, that he lay in his house at Cirencester two months, in which time he had provided for him such necessaries as he needed, amounting to the sum of Fiftie pound, which upon request made, he refused to pay; this is good, as it is here pleaded for the avoiding of such multiplicity of reckonings, without any special shewing what these necessaries were, Dodderidge, Justice, we have here befoze had this Case; One said unto a Physician, that if he did cure such a one of a Fiftilow, he would give him so much for his pains, after the cure was done, he refused to pay the money, whereupon he brought his Action upon his promise, and shewed in his Declaration, that he had cured him of his Fiftilow; this was held good, without shewing all the several Medicines he used about the cure; this then being moved in arrest of Judgement, as in this case here, but the same was over-ruled by the whole Court; and so in this case it is good; Judgement for the Plaintiff by the whole Court, See cases 112. 382.

The Spanish Ambassadoz, by the name of Don- dego, servient de acum against Captain Gifford. Mich. 13 Jac. An Action upon the Case; They set forth, that the King of Spain did give unto Captain Gifford,

Promise to pay for it.

Pleading,

Amongst Merchants

Ca. 381.

Amongst
Merchants

Gifford, the Defendant, decem milli Ducatus Monetæ, to go for him in bello against the Barbarians before such a day: The Defendant promised, that if he did not go before the day, he would then repay the Money: That he did not go, nor pay the Money: upon this the Ambassadors for the King of Spain, his Master, brought this Action, and had a Verdict, upon a Non-Assumpsit: In arrest of Judgement it was moved touching the Consideration, being in Consideration of decem mille Ducatus Monetæ, of the value of Five Shillings six pence every Duckett, and both not shew when they shall be of such a value, for they may be more, or they may be less. Dodderidge, Justice, they are to be of this value at the time of the payment. The whole Court agreed in this, that the Jury may give more or less than the value, in damages, if they will. Cook, Chief Justice, if one do assume to pay another decem mille Ducatus Monetæ, and every one of them to be of the value of Five Shillings six pence; this ought specially to be avowed: here the promise was, that if he did not go before the last of June for the Spaniards against the Barbarians, then he would repay the Money; if he goes not, this ought then to be repaid within a convenient time after the day past: no request is to be made of this; neither ought the Plaintiff to seek him, but at his peril he ought to pay it without any request. If one do promise so much at his coming from Rome to another, he shall have convenient time to pay this after his return from Rome, and this payment is to be without any request; here the Case is upon a Non-Assumpsit pleaded, and a Verdict found against him that did assume, & una Lex alienigenis, & indigenis: And there by the Court Judgement

ment was for the Plaintiff, and a Capias granted to take the Defendant, See case 46.

Gray against Gray. Mich. 10 Jac. B. R. Action Ca. 382.
upon the Case, declares, That the Father, in Consideration that the Plaintiff his Son would pay such a debt for him, he did assume and promise, that he would suffer his Land to descend upon him, that the Plaintiff satisfied and paid the debt: That the Defendant did not suffer his Land to descend; upon this they were at Issue; a demurrer was joyned that it was no good Issue; the difference lies in this, where the Case arising upon the Assumpsit, is in the affirmative, there it ought to be averred in fact, that the Land did descend, but when it is in the negative, it is good as in this Case to say, quod non permittit, that he did not suffer the Land to descend: The whole Court agreed it, that the Action here was well brought, and Judgement for the Plaintiff, Bulstr. 2. part 18.

Consideration to pay a debt for him. Promise that his Land shall descend.

Pleading.

John Pooley, Knight against the Lady Gilbert. Ca. 383;
Mich. 10 Jac. Action upon the Case, declares, That the Plaintiff had perferred a Bill in Chancery against the Defendant for Marriage-money by her received: The Defendant, in Consideration that the Plaintiff would stay the Suit there by him commenced, she assumed to pay him a Hundred pound, and also deliver up a Bond of Forty pound which she had; he stayed the Suit, she did not perform her promise; upon this was a Verdict for the Plaintiff: They move in arrest of Judgement, and alledge, that the Consideration is not good, or sufficient to raise a promise, because it appears not that the Suit in Chancery was a lawful Suit to be there determined; therefore the forbearance not a good Consideration. Williams, Justice, it is a good Con-

Promise to pay the money sued for in consideration of forbearance.

sideration, if the Plaintiff had onely a Supra out of the Chancery against the Defendant, and had not made the cause thereof known, yet if she, in Consideration that the Plaintiff would not prosecute any further against her, did assume to pay him so much; this clearly is good; by Rule of the Court; Judgement for the Plaintiff, Bullstr. 2. part 41.

Ca. 384.

Consideration, a Lease made, promise to pay money.

Consideration past

Jones against Clark. Pasch. 11 Jac. Action upon the Case, declares, That the Plaintiff was possessed of a Shop in London, for five years and a quarter, agrees to demise this to the Defendant, he paying to him forty shillings by the year, and Ten shillings the last quarter, and for the perfecting of this, each gave to other one shilling, & postea, it is set forth, that in consideratione promissor, the Defendant did promise to give unto the Plaintiff Thirty pound; and did assume to pay this afterwards; in Consideration of this, and in performance of the Contract he made the Lease to the Defendant accordingly, the Defendant refused to pay this Thirty pound upon Demand; upon a Non-Assumpsit, a Verdict was for the Plaintiff: In arrest of Judgement it was moved, that the Consideration was not good, because the Consideration was past, perfect and executed. Dodderidge, Justice, it appears that all this was done the same day, and that the Thirty pound was but for a Fine, &c. and it appearing that the Lease was made afterwards, makes it a good Consideration: The payment of the Rent of Forty shillings, and the sum of Thirty pound, all grounded upon the same Consideration; being the making of the Lease by the Plaintiff; Judgement by the Court for the Plaintiff, Bullstr. 2. part 73. See case 387.

Papworth against Johnson. Trin. 11. Jac. de-
 clares, that whereas the Testator I. S. was in his
 life-time indebted unto him in such a sum (and
 doth not set forth how the debt did grow due) That
 the Defendant (the Executor) in Consideration
 that the Plaintiff would forbear the same until the
 Will was proved, he, the Defendant, would pay it,
 &c. upon a Non-Assumpsit was a Verdict for the
 Plaintiff: It was moved in arrest of Judgement,
 that the Declaration was not good, because they set
 forth generally, that the Testator was indebted to
 the Plaintiff, and say not how it became due; for it
 might grow due for such a cause, as that the Execu-
 tor might not be chargeable therewith. Haughton,
 where the Assumpsit is upon an Indebitatus As-
 sumpsit by the Testator, such an Action upon the
 Case upon an Indebitatus Assumpsit by the Testa-
 tor, lyeth not against the Executors, and of this
 we are clearly agreed; but in this Case it ariseth
 not upon an Indebitatus Assumpsit of the Testa-
 tor, but upon a Collateral promise made by the
 Executor. So Dodderidge, Justice: Judgement
 by Rule of the Court for the Plaintiff, Bulstr. 2.
 part 9.

Against an
 Executor.
 Promise
 to pay a
 debt upon
 forbear-
 ance to
 sue.

Pleading.

Rogers against Parry. Mich. 11. Jac. B. R. de-
 clares, that in Consideration of so much paid by
 the Plaintiff to the Defendant, he did promise to
 the Plaintiff, that he would not exercise the Trade
 of a Joyner, in a Shop, parcel of a house to him
 demised in London, for One and twenty years, du-
 rant termino predicto. That the Defendant did
 demise this to a Joyner, who did there exercise the
 Trade of a Joyner during the said Term, and con-
 trary to his promise: upon a Non-Assumpsit a
 Verdict was for the Plaintiff: In arrest of Judge-

Ca. 386.

Consi-
 deration of
 money gi-
 ven.
 Promise
 not to use
 a Trade
 in such a
 place.

How a
promise
shall be
taken,

Promise
unlawful.

ment it was moved, that the Declaration was not good; because he doth not say that he there used the Trade of a Joyner during all the said Term; but during the Term generally. Cook, Chief Justice, there is a difference when the Assumpsit is in the negative, and when in the affirmative; if a man undertake to live in a house during the Term, there it must be taken during all the Term, but where he promiseth not to live in it during the Term, it must be taken not at any time within the Term. Crooke, Justice, doubted upon the binding of one not to use his Trade: The Court agreed, that a man cannot be bound not to use his Trade in general; this is not good: But the whole Court agreed clearly, as this Case is, for a time certain, and a place certain, a man may well be bound: That the Declaration was good; Judgement for the Plaintiff, Bulstr. 2. part 136. See Case 329.

Ca. 387.

Promise,
that if I.
S. would
affirm a
Rent in
difference,
to be due,
he would
double it.

Child against Horden. Mich. 11 Jac. declares, that whereas there was a difference between the Plaintiff and Defendant touching the quantity of Rent to be paid by the Defendant to the Plaintiff; The Defendant promised, that if I. S. would say and affirm that the Rent reserved upon the Lease was Six pound, he the Defendant would double the same Rent to the Plaintiff: That I. S. did affirm it, the Plaintiff demanded double according to promise, the Defendant refused to pay it; upon a Non-Assumpsit a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, because they did not say that they had given notice of this to the Defendant, that I. S. had affirmed it, being no time certain was set down. Haughton, Justice, there will be a difference where a thing is to be done privately by the Plaintiff himself,

ſelf, there notice is to be given, but if it be to be done by a ſtranger (as in this Caſe) there the Defendant at his peril ought to take notice of it, and no notice is neceſſary, becauſe he hath undertaken to do it: So the Declaration is good, and Judgement entered for the Plaintiff, Bulſtr. part. 2. 143. See caſe 99. 2, 3.

Notice to be given.

Symplſon againſt Powell. Mich. 12 Jac. An Action of the Caſe, declares, that whereas a Statute was acknowledged by the Defendant to the Plaintiff, for the performance of certain Covenants contained in an Indenture of demife by the Plaintiff made unto him, amongſt which Covenants, one was, that he ſhould not aſſign over the Lands to any one, which Covenant he had broken by aſſigning of his Leaſe over, and by this the Statute came to be forfeited: That the Defendant, in Conſideration that the Plaintiff would forbear to ſue him upon the ſaid Statute, ſo broken by the aſſignment, he, the ſaid Defendant, would pay the Plaintiff ſuch a ſum of Money, which he hath not paid; upon a Non-Aſſumpſit, Verdict for the Plaintiff: In arreſt of Judgement it was moved, that the Conſideration was not good, in regard that the Statute doth not appear to be forfeit; becauſe he doth not ſhew in the Declaration by what conveyance he had aſſigned over his Eſtate, but layes it in general, that he had aſſigned it. Crook, this is clear a good Conſideration, for that's but an Inducement in the Declaration; the Conſideration is the delaying of the Suit, which is good, to which all the Court agreed. Crook further, your promiſe upon Conſideration the Plaintiff would not ſue you upon the Statute, is a direct admittance by your ſelf, that the Statute is forfeited; Judgement for the Plaintiff by agree-

Ca. 388.

Conſideration, forbearance to ſue a Statute.

Promiſe to pay.

Conſideration valuable.

ment of the whole Court, Bullstr. 2. part 263. See cases 10. 69.

Ca. 389. Freeman and his Wife against Freeman. Mich. 12 Jac. An Action upon the Case, declares, that the Defendant, in Consideration that the Plaintiffs Wife, while she was sole, would take the Plaintiff to her Husband, he promised to assure unto her such an Estate in Land for her life for a Joynture, that she did take the Plaintiff to her Husband; the Defendant did not perform his promise; upon a Non-Assumpsit, was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Action would not lye, for that there was no good Consideration set forth: The Court clear of opinion, it is good Judgement for the Plaintiff, Bullstr. 2. part 269. See cases 9. 14, 17, and others.

Ca. 390. Chapman against Jane Barnaby, as Executrix to her Husband. Mich. 12 Jac. An Action upon the Case; The Plaintiff sets forth, that he had sold certain Wines to the Defendants Husband, and the Money not being paid, he had a purpose to sue her for it, after her Husbands death, she acknowledged the debt, and promised, in Consideration that the Plaintiff would forbear her until such a time, she would pay him: That the Plaintiff did forbear that time, she did not pay; upon a Non-Assumpsit a Verdict was found for the Plaintiff: In arrest of Judgement was moved, that this debt grew due upon the Contract of the Husband, and the promises upon forbearance for a time; this is not good to charge her: The whole Court clear, that it is good: Judgement for the Plaintiff, Bullstr. 2. part 278. See case 225.

Ca. 391. Talbye against Cooke. Hill. 7 Jac. B. R. An Action upon the Case, declares, that the Plaintiff
and

and Defendant accounted, and thereupon the Defendant was in arrear to the Plaintiff in Six pound, which he promised to pay at a day then past: The Defendant pleads and confesseth, that a long time befoze there was such an Account, and he was in arrear then to him Six pound, for the payment of which he entred into Bonds to the Plaintiff, and concludes his Plea with an absque hoc, that there was any other Account between them since that time; The Plaintiff demurs in Law, and saith, the Traverse so taken is not good, for the Account is not traversable, but the Assumpsit in this Case. Yelverton, Justice, the Defendant doth not traverse the Consideration, but by his Plea he confesseth the Action with full satisfaction made of the same demanded: And afterwards to take the Traverse and say, absque hoc, that at any time after this he did account with the Plaintiff, he could not have taken a better Traverse: The Court all agreed in this: Judgement for the Defendant, quod querens nil capiat per breve. Bulstr. 1. part 16. See cases 142. 178, 219, 253, 287, 330.

Wolverton and his Wife against Davis. Trin. 8 Jac. B. R. Action upon the Case, declares, that the Defendant, in Consideration that the Plaintiff would pay him a Hundred pound, he would enfeoff the Plaintiff of certain Lands, upon request; that the Plaintiff paid him the Hundred pound and requested the feoffment, the Defendant refused to make it; The Defendant pleads, that befoze the Action brought, he did enfeoff the Plaintiff; That the Plaintiff had accepted thereof in satisfaction and discharge of all, and yet contrary thereto he brought his Action; and so he prays the Judgement of the Court by his Council, whether this

Upon an Account.

Pleading.

Ca. 392.
Consideration to make a Feoffment promise to pay money. Contract discharge by a subsequent Act.

his acceptance of the Froffment did not go in discharge of all; The Court agreed it, and Judgement for the Defendant, quod querens nil capiat per Billam. Bullstr. 1. part 38. See cases 134. 150, 986, 222.

Ca. 393. Blunt and Bassett. P. 2. Car. 1. In an Action upon the Case, and shews, that the Plaintiff did leave his Horse with the Defendant, being an Inn-keeper, to be safely kept at such a rate, and the Defendant lent him out to hire to divers persons; whereby he was made lame, and the Plaintiff lost his business, and was damnified, &c. And upon not guilty pleaded, Verdict was found for the Plaintiff, and it was moved, that since the Jury found Twenty Marks damages, that the Defendant might retain the Horse. The Court, in this Case, the damages are not given for the Horse, but for the misuse and loss of business, but in Trover it is in recompence of the Horse, and the Plaintiff had Judgement, Bendl. 171. See case 350. sect. 1. case 1.

Ca. 394. Stone and Withepole in B. R. Trin. 30 Eliz. Action upon the Case; The Plaintiff declared, that I. S. was indebted to him for Velvet, and other things, to such a value, promised to pay it such a day, and dyed, and the Defendant being threatened with a Suit, he desires the Plaintiff to stay till such a day, and he would pay it, or give security for it; he stayed, &c. and set forth that the Defendant was Executor to him, &c. The Defendant pleaded, that the Testator was within age at the time of the making the promise; and hereupon the Plaintiff demurred; And Judgement was given against the Plaintiff, and that the Contract of the Infant was merely void; And yet there said, If an Infant commit Trespass, and submit it to an Award, that this

Inn-keeper
abusing of a
horse.

Promise
for Wares
sold, to
pay money.

Infant.

this will bind him at his full age: Or if he at his full age assumes to pay such a debt arising during his Minority; some say this is good: And where it is upon a promise of forbearance; there doubtless the promise is good. But if one promise a debt that he doth not owe, this is void: And yet if goods be delivered to an Infant, to be re-delivered, if the Executor of the Infant, shall afterwards assume to re-deliver them; this is good: And there it is said to be agreed by the Court, That where an Infant is bound in an Obligation, and he at his full age promiseth, upon forbearance to sue for payment of the debt, that an Action will lye for this, Croo.

Executors

Infant.

1. last publisht. 700 and Owen. Rep. 94. 95. Where the Case is somewhat otherwise reported. And in Croo. 1. last publisht. 126. It seems to be put thus, Stone and Withepole Executor of D. Withepole. Hill. 31 Eliz. B. R. Assumpsit, where the Testator, an Infant, was indebted to him for certain pieces of Velvet, and other things, and five pound in Money, and he being within age, promised to pay it such a day, and dyed before the day, and the Plaintiff being minded to sue, the Defendant desired him to forbear his Suit till such a day, and he would pay him. or give security; whereupon he stayed, &c. The Defendant pleaded his Non-age, the Plaintiff demurred; and it was adjudged against the Plaintiff, See Cases 372. 128, 253, 394.

In the Case of Harris and Ewre, upon two several promises, the Defendant did traverse a Consideration executed, and the Chief Justice held it not traversable: But that a Consideration executory is traversable. Trin. 14 Jac. B. R. And that it was adjudged. Mich. 37, & 38 Eliz. Co. B. inter Genny &c.

Ca. 395.

Traverse.

&c

Conside-
ration
past.

& Goochman; That if one declare, that in consi-
deration quod deliberasset & dedisset to the Defen-
dant Twenty Sheep, he assume, &c. that this is not
a good consideration, for it is past, See cases 384.
387, 317, 265.

S E C T. II.

For tur-
ning a wa-
ter from a
mill.

Sir William Wrey versus Vesper in B. R. In Adi-
son upon the case, whereas A. &c. being a
Corporation, were seized in Fee of three Water-
Mills in L. prædict. And that the said A. and all
those, &c. in the said Mills for them their Tenants
and Farmers time, whereof, &c. have had their
Water-courses running from a place called H. in
parochia L. prædict. usque the said Mills to serve
them with water to grinde Corn: And that such a
day and year they demised unto him the said Mills
for One and twenty years: And that he being so
possessed, the Defendant primo Octobris, 5 Jac.
apud L. prædict. between H. aforesaid, and the
Mills, in a close where the Mills are erected, and
where the Water-course used to run, digged a
Trench, and diverted the said course of water,
whereby it came to pass, whereas he was used to
grinde every week Thirty quarters of Corn, he
could now grinde but Ten quarters, &c. and upon
not guilty pleaded, and a Verdict for the Plaintiff,
and divers exceptions taken to the Declaration,
Judgement was given for the Plaintiff, Croo. 2. 263.

Case 2.

In Batens Case. Co. 9. 24. In a quod permit-
tat to throw down a House raised to the nuisance
of the Franklement of P. and now of the Plain-
tiffs, and counts that the Defendants House did
hang

hang over the House of the Plaintiff: In this case it was amongst other things resolved,

Pleading.

1. That he need not to shew how he had the estate
2. That the Writ to the Nuisance of the Franklesment of P. and &c. is good, the erecting in the time of P. implieth a Nuisance to him, and to say to the Nuisance of the Plaintiff is necessary.

3. That the Nuisance to the damage of the Plaintiff appears to the Court, and need not to be shewn, the hanging over is a plain proof that the light is stopped, and the Rain falls. The Plaintiff may throw down the Nuisance. The Statute Westm. 2. 24. which gives a quod permittat against the Alience of him that erects, extends not to the Alience of the Alience.

Case 3.

In Aldreds Case. Co. 8. 57. It was resolved,

1. That when a man hath a lawful profit by prescription of time, other custome of the like time also cannot take the same away, for one custome is as antient as the other. As if one have a way over the Lands of B. to his freehold Land by prescription, B. cannot alledge a custome or prescription to stop this way, for it may be the owner of the Land, before the time of Memory had granted such a way, without a stopping; and so the prescription might have a lawful beginning. 29 Eliz. B. R. 2. Thomas Brand prescribed, time out of memory, to have the light of Seven windows towards a piece of Land of Thomas Moselle in the City of York, and Moselle erected a new building upon the same piece of Land, so near, &c. as the light of the windows were stopped. Brand brought his Action of the Case, and Judgement was given for the Plaintiff: for it might be, that before the time of memory, owner of that Land did grant license to the owner of the

Prescription to a way.

To Lights

Water-
course.
Lime-kill.
Hogg-stye.
Dye-house

Prospect.

Case 4.

Nuisance,
stopping
up light.

Against
whom it
lyeth,

to have the same Seven Windows, without stopping them: And so the prescription might have a lawful beginning. 3. If a man have a Water-course to his house for necessary uses, and a Glover make a Linre-pit for Calf-skins so near to it, that it doth corrupt it; this Action lyeth: So for erecting of a Hogg-stye so near to my dwelling-house, that the Air is corrupted, or a Dye-house, if the filth run into a Fish-pond, and yet these things are profitable: So this Action will lye for stopping of my light, but not for stopping of my prospect.

The Action was brought against B. a Tenant, and declared thus, That the Plaintiff was seized in Fee of a Messuage and Chamber in N. and T. H. was then possessed of a little Shed adjoining to the said House; And that at the time (said for the Seisin) and from the time whereof, &c. there was a Window in the said House looking towards the Shed, by which Window onely, and by no other means, the light came into the Chamber of the said House: That T. H. erected a building upon the said Shed, so near to the said House, that it stopt all the light of the Window, that he lost all his light. And that the Defendant B. being possessed of the same building newly erected, had continued and not amoved it from such a day; upon not guilty pleaded, it was found for the Plaintiff, and upon motion to arrest this Judgement, it was resolved, that this Action might have been had against him that built it, but it lyeth not against the Tenant for the continuance of it by habitation onely: But that for a new Cock, or a new Penthouse, that over-hangeth another mans Court, by the new turning of a Cock, or a new shower of Rain, is a new Nuisance, and he may have Action, Croc. 2. 372.

Simonds and Seaborne. Mich. 9 Car. 1. B. R. Case 5.

The Plaintiff shews, that he was possessed of a House in, &c. and the Defendant was, and yet is possessed of a House, and void piece of ground, from which ground the light came into the Plaintiffs Windows; the Defendant maliciously to keep the light away, erected a House, whereby his House is totally darkned; moved in arrest, &c. that there is Repugnancy in the Declaration; and now to say adhuc possessionat. of the piece of ground, and to shew the offence in erecting, shews it no piece of void ground now, but the Judges held it not so, for it may be but part is built upon. 2. There is a prescription alledged, and not any person alledged in whom the prescription may be fixed; the Plaintiff is but Lessee for years, who cannot prescribe: But to this was answered, the time whereof, &c. is tyed to the House, and not to any personal prescription, and being an ancient House, and Windows therein time whereof, &c. there need not any prescription in any person; wherefore it was adjudged for the Plaintiff. Cro. 1. 237.

Stopping
the light
of a house

Prescription.

Stackman versus West. In an Action of the Case 6. Case, the Plaintiff supposed, that such a Corporation was seized in fee of a House in S. And that he, and all they whose estate in the said House, &c. have had a foot-way from this House to the River of Thames, and let this House to the Plaintiff for years, and that the Defendant erected a Gate-house cross the said way: In this Case it was resolved and adjudged, that the alledging of it by such a prescription, and a Que Estate, was good, without shewing how by deed, because the Action was brought by a Lessee for years, who hath not the deed: But if he had claimed Rent, or Common in gross, which can

Nufance
in a way.

Pleading.

cannot pass without a deed, Contra: for there the deed must be shewn, Croo. 2. 673. Adjudged for the Plaintiff.

Case 7.

Nuisance
in stop-
ping of
light.

Prescrip-
tion:

M. 9 Jac. B. R. Ward versus Cheshire. The Plaintiff counts, that he is seized in fee of a Kitchen in parochi sancti Dunstani in London, and prescribes to have windows on the back-side, &c. that the Defendants had stopped up maximam partem, &c. upon not guilty it was found for the Plaintiff, and moved in arrest of Judgement; 1. For that he did not shew the Kitchen was ancient, but resolved to be implied in the prescription. 2. For that the quantity was not shewed, sed non allocatur, but resolved that it need not be, and the Plaintiff had Judgement.

Case 8.

Lights
stopped.
Londons
Customs.

Hill. 9 Jac. B. R. Hughes and Keme. A. had an ancient house in London, B. builds a new one, which stops the light of A. per Curiam, resolved, 1. That a man cannot, by the custom of London, erect a new house, where there was not one before, to stop the lights of the ancient house. 2. Upon an ancient foundation a man may erect a new house, and stop the ancient lights of his neighbour, for by the same reason that his neighbour erected his house higher, he may erect his higher; but he cannot enlarge his in breadth or length, to stop the light of his neighbour.

Case 9.

Water-
course.
Nuisance
continued

Count.

This Action upon the Case was brought against Dame Brown, for turning a part of a course of water that did run from, &c. to the house of the Plaintiff: And it appeared, that the diversion was of one main pipe, out of which the Husband of the Defendant made a Quill with a Cock, to serve his house in his life time; and because it was with a Cock, so that upon every opening of the Cock, there

there was a new diversion, the Action did lie against the Wife: But the Judgement was long stayed, because the Plaintiff did not set forth that he was seized of the house, to which, &c. at the time of the diversion, sed cum existat, &c. And after Error was brought, Dyer. 320.

In Penruddocks Case. In a quod permittat between Clark Assignee of Thomas Chickley Plaintiff, and Edward Penruddock, and Mary his Wife, Defendants, Assignee of one John Cock, for that Cock, Octobris 10. Mar. erected upon his freehold a house in St. Johns-street, so next the Curtilage of an house of Thomas Chickley, that domus illa super pender Anglice, doth overhang magnam partem, videlicet tres pedes Curtilagii, the Plaintiff, sic quod aquae pluviales de eadem domo decedentes solum ejusdem Curtilagii conterunt, & magnopere & indies magis magisque consumunt & devastant, ac ea ratione Curtilag. prædict. quolibet pluviale tempore humectat, & inundat existit, quod prædictus Henricus Clark inhabitans in eodem Mesuagio nullum proficium seu easiamentum de eodem Curtilagio percipere possit ad nocumentum liberi tenement prædict. &c. It was resolved, that the distilling of the water in the time of the Feoffee, or Assignee is a new wrong; and that this Writ lyeth after request of amendment, but not before: But it lyeth against him that first did the wrong without Request; and the Action good, &c. Co. 5. 100.

In Williams. Co. 5. 72. It was resolved, that no one man alone may have an Action of the Case for a common Nuisance made in the High-way, to avoid multiplicity of Actions against one man for the same thing: But if any particular man have

Case 7.

By overhanging my house.

Case 11. Common Nuisances. No Action for these.

more

Prescrip-
tion for
Divine
service in
a Chappel

more particular damage than another man, he may have a particular Action of the Case for his particular damage: But for Common Usances, other Remedy is to be had; and therefore a prescription to do Divine Service in a Chappel for the Lord, and his Tenants is remediable in the Spiritual Court onely: But for the Lord and his private Family, an Action of the Case lyeth for the Lord onely.

Case 12.

Stopping
of a way.

Custom
of a Parish

Baker and his Wife against Bereman. Mich. 11 Car. 1. B. R. Action on the Case, shews, that they were possessed of such a Close for years in such a Parish, and that the Defendant was possessed of another Close near joyning: And that within the said Parish there is a Custom, That all occupiers of such a Close of the Plaintiffs, time out of mind, &c. had a Hoyle and Foot-way, &c. And that the Defendant had built to stop the said way, &c. moved in arrest of Judgement, 1. That such a Custom in a Parish alledged for an occupier to have a way, &c. is not good, but he must prescribe in him who hath the Inheritance; and that a Custom in a Parish cannot well be applied to a Close in the Parish, Co. 6. 59. Dyer. 363. And of that opinion was the whole Court: But Inhabitants may prescribe for a way to Church or Parget, or the like, where necessity is: But not in matter of profit or charge in anothers soil. 8 Ed. 4. 5. So for Fisher-men to dry Nets, pro bono publ. 15 Ed. 4. 29. And there held, the Husband and Wife might joyne in wrong done to her, where he hath her Right, Cro. 1. 302.

Case 13.

Stopping
of water
coming to
a mill.

Richard Jackson and Mordant. 30. 31 Eliz. B. R. The Plaintiff counted, that he had a Lease for One and twenty years, of Five Acres of Meadow next

near to a River called Wesbury-River, that the Defendant had erected a Water-mill super & trans the said River, by reason whereof, obstupavit the Water running in the said River with his Mill, so that the Water from time to time yearly after the erecting of the said Mill, overflowed the Banks of the River in the said Five Acres, and them inundavit, by which they became barren, &c. and Judgement was given for the Plaintiff. The same time another Case between Broome and Mordant. The Plaintiff did count, that he was seized of a Water-Mill called Westbury-Mill, ut de libero tenemento: And that he, and all those whose estate he had in the said Mill, have, time out of mind, had a Waters course running in the River of Westbury, to a Mill called Innefty-Mill, &c. to the said Wesbury-Mill, and from thence, &c. super & trans an Acre of Land of the Defendants to a Mill called Mixbury-Mill, &c. and this without any erecting of any Mill: And had time out of mind, the multure of divers Inhabitants there of their Corn, &c. And that the Defendant erected a new Mill upon the said Acre of Land, per quod obstupavit aquam prædictam ita quod molendinum prædictum suffocatum fuit, so that he lost the profit, &c. Judgement was given for the Plaintiff, Croo. 1. last publisht. 112, 113.

Bury and Pope. M. 30, 31 Eliz. B. R. In a Case for stopping of light; It was agreed by all the Justices, that if two men be owners of two parcels of Land adjoining, and one of them doth build a house upon his Land, and make windows and lights looking into the others Lands, and this house and the lights have continued by the space of Thirty or Forty years, yet the other may upon his own Land and Soil lawfully erect a House or other

U u

thing

Case 14:

stopping
of lights

thing against the said lights and windows, and the other can have no Action, for it was his folly to build his house so near to the others Land; and it was adjudged accordingly; Cujus est solum, cujus est summitas usque ad Cœlum. Croo. 1. last publisht. 118. and Lanes Rep. 234. Where it is thus reported. A. demised two houses in London to Mason for Sixty years, Mason leased one of them to B. and covenanted with him, that it should be lawful for him his Executors and Assigns to make a window in the Shop of that House, so assigned, which was after done where no window was before, after B. assigned the House to the Plaintiff: And the Defendant having a House adjoining, built a new house in his own ground over against the other, and thereby stoppt the new window: It was resolved by the Court, that no Action would lye for this, because the window was made within the time of memory: But if the window had been there, time out of mind, Contra, But if the Defendant had held it under the estate of Mason, that had covenanted, it could not have been justified.

Case 15. Westborne and Mordant. M. 32, & 33 Eliz. B. R. Action upon the Case; where he was possessed of a Meadow called Parsonage-Meadow in W. adjoining to a little Brook there, from the Twentieth of April, 31 Eliz. & adhuc inde possessionatus, the Defendant the said Twentieth of April, put in divers loads of Stone into the said Brook, and by it obstruavit aquam illam, that it from the Twentieth of April, to the day of the writ purchased, overflowed his Meadow, that he could not have the benefit of it: Verdict for the Plaintiff, motion to arrest the Judgement, for the Pleasance is supposed to be done before the Plaintiffs Title did begin:

But

But Judgement was commanded to be entred for the Plaintiff, Croo. 1. last publisht. 191.

Sir George Fermor and Brook. M. 32, 33 Eliz. **Case 16.**
 B. R. Action upon the Case, for erecting a Bake-
 house in Tossiter; and declares, that where, time
 out of mind, &c. there had been a Mannor called
 Tossiter in the said County, and for the same time
 a Town of Tossiter, and that all the Land within
 the same Town had been holden of the said Man-
 nor of which he is Lord; and that he, and all his
 Ancestors, and all those whose estate, &c. had used
 to have a Bake-house, and a Baker there to bake
 white bread, and House-bread, for all the Inhabi-
 tants there, and Strangers, Passengers, and that
 none by the said time. &c. had used to have a Bake-
 house there, but by their appointment; yet the
 Defendant had erected a Bake-house there, ad no-
 cumentum suum; In this Case upon a demur it
 was adjudged for the Plaintiff, Croo. 1. last publisht
 203.

Prescrip-
 on.

Erecting
 a new
 Bake-
 house.

Beswick and Gunden. Trin. 37 Eliz. B. R. Action **Case 17.**
 upon the Case; for that the Defendant levied a
 Dam in such a River such a day; whereby it drown-
 ed the Land of I. S. who afterwards incoffed the
 Plaintiff thereof, and that the Defendant adhuc
 malitiose custodivit the said Dam, whereby the
 Plaintiffs Land is surrounded; upon this Decla-
 ration it was demurred in Law; and said; the
 Action is not maintainable, for the Plaintiff had
 not any thing in the Land at the time of the Nu-
 sance erected, and no new thing is done to his in-
 jury: And cited 4. Ass. 3. 2 H. 4, 11. 18 Ed; 2. Ass.
 374. And the Lady Browns Case. Dyer. 319.
 Where for every turning of the new Cock she was
 chargeable; admitted to be Law. And F. N. B. 11.

Levying
 of a Dam;

Who may
charge, or
be charg-
ed in this
Action,

Nuisance
continued

That the Heir of the Feoffee shall have Action against the Feoffee of him that levied the Nuisance: And Rolis Case, Pasch. 25 Eliz. said to be adjudged; where one erected a House so near to another House, that the Main descended from the new House, &c. and the Heir brought an Action upon the Case for the Nuisance made by building the House in his Fathers time, and recovered by Judgment. Gawdy held, the Action was well brought for the keeping it up in his time, but not for the levying of it. Popham. There is a difference, when there is not any profit remaining to him, to whom the Nuisance is levied, then it is clear, that none may have the Action, but he to whom it was done. As if I have Pot-water running from a River to my House, and I. S. stop it in his Land before it come to my Land, and he dyes, or makes a Feoffment over, my Heir, or my Feoffee of the Land, can have no remedy for the wrong before: But where any profit remains to the Heir, or Feoffee after the Nuisance done, there for so much thereof as is kept from them, they shall have remedy: And in this Case by the continuance of the Nuisance, the ground surrounded is made worse and worse, and therefore it was agreed, the Action will lie here: And so in Case of a Non-Fealance, for not repairing of a Bank, where, &c. And two Judges held at first the Tort was extinguishd by the Feoffment: But after the Judges all agreed that the Action was well brought, and it was adjudged for the Plaintiff, Croo. 1. last publisht, 402, 403.

Case 18. Alston and Pamphyn. P. 38 Eliz. B. R. Action upon the Case for stoppign of a way to his Free of a way, hold in Neshton in Norfolk; upon not guilty plead

pleaded, it was found for the Plaintiff, and moved in arrest of Judgement, that it being a Nulance to his Freehold, he ought to have had an Assize, and not an Action of the Case, 2 H. 4. 11. 21 H. 7. 30. Dyer. 250. But all the Court held, he might have the one, or the other at his election: And it was adjudged for the Plaintiff, Croo. 1. last publishr. 466.

Beswick and Cumden. M. 38, 39 Eliz. Co. B. Case 19.
 Action upon the Case, and Counts, that he was seized in Fee of Lands adjoining to a Brook, whereof the Defendant was seized, and that the Defendant custodiuit & manucuruit quendam molem in the Brook, by reason whereof the Brook surrounded his his Land, &c. whereupon the Defendant demurred: And it was resolved in this Case by the Judges, that this Action of the Case lyeth not: For if it were a Nulance, the Plaintiff might have his Remedy by an Assize, or quod permittat: And a man shall never have an Action of the Case, where he may have another Remedy by a Writ founded in the Register; and this is given, where there wants such a Remedy. 2. That there is no offence done by the Defendant, for it is said he kept and maintained a Bank, which is, that he kept it as he found it: And if it were a Nulance before his time, it is not any offence in him to keep it; but the Plaintiff is to have his remedy, to abate it by a quod permittat; and therefore the Case here differs from the 4. Ass. pl. 3. For there the using was a new Nulance, but it is not so here; wherefore it was adjudged for the Defendant, Croo. 1. last publishr. 520.

Not re-
 pairing a
 Bank
 w^hi, by

Fineux and Hovenden. Action upon the Case. Pasch. 41 Eliz. Co. B. Whereas there had been a way within the City of Canterbury, leading from

Case 20.
 stopping
 of a way.

Stopping
of a way.

Publick
Nuisance;
Spiritual
Court.
Private
Nuisance;

St. Peters-street, to a street called Rushmarket-street; and that all the Inhabitants of the City had used time whereof, &c. to pass that way; and that the Plaintiff was an Inhabitant there; that the Defendant had made a ditch, and erected a pile cross that way, whereby he had lost his passage, &c. In this Action it was agreed, that this Action lies not for a private person, unless he have some preiudice above other men. 27 H. 8. 27. As where the Parson of an adjoining Church is, time out of mind, to read Prayer every Sunday for the Lord and his Tenants, in the Chappel of the Mannor, and he do it not, here the Lord may not have this Action: But they must have remedy by the Ordinary. And yet in case where no other Remedy is to be had, there perhaps every one may have an Action as hath been adjudged between Westbury and Powell; where the Inhabitants of Southwark had a common watering-place, and the Defendant had stopp'd it, and the Plaintiff being an Inhabitant there, brought this Action, and it was adjudged maintainable. But that in this Case it is punishable in the Exchequer, Cro. 1. last published. 664

Case 21.

Conies.

misfeasance.

Nuisance.

Dove-house.

In Bulkers Case. Co. 5. 104. It was adjudged, That if a man make Cony-burrows in his own Land, and the Conies increase to so great a number, that they destroy the neighbours ground adjoining; the neighbours may not have an Action upon the Case for this, for presently when they come into their grounds they may kill them, because they are fera natura: And there it was resolved, that none may newly erect a Dove-house, but the Lord of a Mannor; and if another do it, he may be punished in a Let; but no Action may be brought against him by any particular man:
And

And of this opinion touching a Dove-coat, was Sir Roger Manwood, and the Barons of the Exchequer in the Exchequer Chamber. See it again, Croo. 1. last publisht. 547.

Leeds and Shakerlay. Action upon the Case, sup-
posing he was seized in Fee of a Mill in Snodeland; and that he, and all those whose estate, &c. from time whereof, &c. had a water-course running by three Villages, viz. A. B. and C. to the said Mill, that the Defendant cut the Banks of the Water-course in A. whereby he lost the profits of his Mill; after Verdict for the Plaintiff; moved to arrest Judgement, because it was not shewed in the Court, that he was seized of the Mill at the time of the cutting; And for this it was held to be sufficient; and adjudged for the Defendant, Croo. 1. last publisht. 751.

Case 22.

Diverting a water-course.

Norton and Palmer. 43 Eliz. Co. B. Action upon the Case, for that he was possessed of a House and Garden for Twenty years, and the Defendant being a Butcher; had a Slaughter house and yard next adjoyning to the Plaintiffs Garden: That the Defendant had erected his yard, and made a ditch, whereby he conveyed the filth, and offal of his Beasts, which he Slaughtered, into the Plaintiffs Garden, wherefore, &c. And it was arrested, after Verdict for the Plaintiff, because the Writ and Court did not agree, Croo. 1. last publisht. 829.

Case 23.

Laying filth in a ditch adjoyning to my Garden.

Hoddeson Knight and Grechil. M. 15 Jac. B. R. It was resolved, That a Commoner may not enter into the Common, where the owner of the soil hath Conies upon the ground, albeit he have so many as eat up his Common, and leave him not enough for his Beasts, to chase and kill the Conies: But the Beasts of a Stranger he may distrain damages.

Ca. 24.

& 25.

Commoner ne poit kill Conies.

mage-sealant, or drive them out of the Common: And if the Lord surcharge the Sale with Conies, the Commoner, upon this particular loss, may have an Action upon the Case against him, by all the Judges upon mature deliberation, they being before of another opinion. Accord. P. 43 Eliz. Rot. 134. Bellew and Langden. 28 Eliz. Cony and others.

Case 26. Surtey and Piggot. H. 1 Car. 1. B. R. The Case was in effect thus; A. seized of White-Acre, and also of a House, with the Curtilage and Hop-yard: And in the Curtilage there was a water-pond for the Cattle, and the water-pond came and goured thorough the Hop-yard into the pond. A. encloses P. of the Hop-yard, and afterwards leases the House and Curtilage to S. P. stops the stream, and S. brought an Action of the Case: And the question was, if by the unity of possession the water-course be gone, so that the seoffe of the Land, by which he goured might stop it: And adjudged, that it is not extinct: For it is a thing of necessity by the continual flowing of the stream. 12 H. 7. 4. of a Butter. So it is also of a thing that hath an existence during the time of the unity. As a Warren. 35 H. 5. 5. Warren. 16. Otherwise of a Rent or Way which a man cannot have in his own Land. 14 H. 7. 7. And the Case. M. 6 Jac. between Chaloner and Moore was cited, that an Ejectione firmæ doth not lye of a Water-course, because it is a thing fluent and incertain. See 11 H. 7. 25. Of a Butter, and there agreed notwithstanding. 21 Ed. 3. 2. 31 H. 6. 3. That a cross way of necessity, is not extinct by unity of possession: But otherwise it is of a cross way of ease. The Case of the Lady Brown was cited; who had a Water-course through White-Acre running to her House, and doth

stopping
of a wa-
ter-course

Where
extinct by
unity of
possession.

doth purchase White-Acre, and then cuts and stops the Pipes; there such a Water-course is good, because of the intent of the owner declared; and the thing hath not now a continuance in the possession of the party himself. And Dodridge agreed, that the fence is extinguished by unity, because it is not a thing of necessity; and so the other Justices: And there this Case was agreed A. had a Water-mill, and a Water-course to it over his own Land, and enfeoffs another of that Land, yet the Water-course shall remain, and the Feoffee cannot stop it. Noy. Rep. 84.

Cantwell and Church. A Commoner brought Case 27. an Action of the Case for the stopping of his way to the Common, and upon a Writ of Error affirmed to be well brought, although he might have had an Assize. As if it be done by a stranger, and not the Terre-tenant, or by one that is dead, in which Case no Assize lyeth In Mich. Term following. Judgement was affirmed for the Plaintiff in the first Action, Dyer. 250. 22 H. 6. 15. 21 H. 7. 30. 33 H. 6. 26. Noy. Rep. 37.

stopping
of a way.

Paul Banings Case. P. 37 Eliz. In an Action upon Case 28. the Case, and declares, That where the Plaintiff was seized of a House in D. in the County of L. and shews the estate, &c. and prescribes to have a cross way, in, by, and thorow a certain way in Sale, the County aforesaid, unto such a Close in D. in the said County, and that the Defendant made a Hedge in the Close of D. in the said County, and did stop up his cross way, &c. And upon a Verdict for the Plaintiff, exceptions were taken to the Declaration, Noy. Rep. 9.

stopping
of a cross
way.

Park and Stewlam. An Action was brought for stop Case 29.

stopping
of a way.

ping a way which the Plaintiff had from such a place over Black-Acre, where the Ruisance is, unto such a Field (by name) And it was ruled to be good, without shewing what interest he had in that Field; for it shall be intended to be a Common Field: But otherwise it had been ad talem Clausum. Where he must shew what interest he hath in the Close, 8 H. 5. 4, 6. Noys Rep. 86.

Case 30.

stopping
of a way.

Assize.

Garnford and Nightingale. Trin. 2 Jac. Co. B. Action upon the Case, declares, that he was seized in Fee of Black-Acre, and that he had a way to it by such a gate, &c. and that the Defendant had fastened the gate with a lock; and it was adjudged, that this Action will lie, and he shall not be put to an Assize: For it doth not appear he doth claim a Franklement in the Land by which, &c. for it may be the Land of a stranger, and then an Assize doth not lie against him: And then the disturbance is pro tempore onely, of which a man cannot have an Assize; as where a man meddles with the Franklement; as in digging, or making of a ditch, See 2 H. 4. 11, 14 H. 8. 31. Dyer. 319. 6. Noys. Rep. 112.

Case 31.

stopping
of a
Church-
way.

Reyner and Waterhouse. An Action upon the Case; The Declaration was, That whereas he is, and by the space of Twenty years past, hath been an Inhabitant within the Town of L. in the Parish of B. And whereas the Inhabitants of L. de tempore, &c. used to have a common way as well for Foot-men, as for Horse-men, to go and ride from the said Town of L. to the said Parish Church of B. on Lords days, Festival days, and other convenient times to hear Divine Service within the said Church, and to carry bodiees, &c. dying in the said Town, to the said Church to be interred, modo

&c

& forma sequen. viz. &c. and shews the way thow divers Cloies in L. and G. and over the Churchyard of the Church of B. and from thence unto the Church aforesaid, and backward, &c. and shews one disturbance made by the Defendant, by making of a ditch in one of the Cloies in G. To this Declaration the Defendant did plead not guilty, and there was a Trial, but by mistake of the venire, it was quashed, and a new ven. facias. Hutton. Rep. 27.

Pasch. 14 Car. 1. B. R. Anonimus. An Action of the case was brought for diverting an ancient water-course, qui currere consuevissent & debuissent to his Mill; moved in arrest, &c. because he shewed no Title to it by prescription, &c. But it being alledged Antiquus aquæduct. And that by it the water currere consueviss. &c. the Court held it good, and adjudged for the Plaintiff; and gave the same Rule in another case of the like nature, and the same day, Croo. 1. 359.

Morley and Pragnel. M. 14 Car. 1. B. R. Action Case 32. upon the Case by an Inn-keeper against one, for a malicious erecting of a Tallow-furnace, and boiling therein stinking Tallow, to the annoyance of him and his Guests, &c. and it was moved in arrest, &c. for that it was but his Trade; but it was adjudged for the Plaintiff, and said, that everyone ought sicuti suo quod alienum non laedet; Judgement for the Plaintiff, Croo. 1. 367.

Diverting
a water-
stream. 2

Sands and Tresulas. Croo. 1. 415. Hill. 15 Car. 1. B. R. Upon the Case for stopping of a Water-course, declares, he was seized in Fee of a Mill, and had a Water-course running in the Defendants Land to a Water-course, which run to his Mill, and the Defendant had stopped this, &c. moved in arrest, because he shews not that his Mill and Ma-

Erecting a
Tallow-
furnace
near to an
Inn. 1

ter-course was an antient, &c. and does not prescribe to have a Water-course in the Defendants Land; but held to be good enough, for he was lawfully in possession, and the stopping was tortious; and it is not material to shew que estate.

Case 35.

Cutting of
the Bank
of a River
whereby.
&c.

Winchcombe and Shepheard. Hill. 42 Eliz. Camera Scaccaria. Error of a Judgement in the Queens-Bench in an Action of the Case for the cutting down of the Bank of the River, whereby his Meadow adjoining was surrounded. The Defendant justifies by prescription for the reparation of his (the Defendants) Mill; and thereupon the Plaintiff demurred, and adjudged against him. That the prescription was good, and the manner of pleading. Error was brought thereof, and Error assigned for the Anno, viz. because he prescribes to cut down the Banks between the River, which runs to the Defendants Mill, and the River called Old Chatwell, and saith, that he cut down the banks of the said River, and saith not between the Old Chatwell, and so not pursuant of the prescription; and it was holden to be an incurable fault: And it was objected also, that he declares that he is Lessee at Will of Lands, and averreth not the life of the Lessor, sed non allocatur: But for the first fault, the Judgement was reversed, and the Record remanded: And the Court of Queens-Bench against their former Judgement, awarded a Writ of enquiry of damages, Croo. 1. last publisht. 747. and in Herley. Rep. 118.

Case 36.

For stop-
ping up of
three
lights 70.

Newall and Barnard. Pasch. 9 Jac. B. R. The Action was brought against the Defendant for stopping of three antient lights, which had been there time out of mind, and that the Defendant had stopped them up totaliter ad damnum, &c. The Defendant

Defendant confessed the stopping of two of them, and *saliter* Justifies by the Custom of London, that one may build upon an old foundation, and upon his own Land, &c. It was adjudged for the Plaintiff, Bulstr. 1. part 116. *the Customs of London.*

Shery and Piggot. Pasch. 2 Car. 1. B. R. In an Case 37. Action upon the Case for the stopping of a Water-course, which had used to have its Current from such a place thowow such a place, and so to come into the Plaintiffs yard, and there to fill and supply a Pond with water for the necessary watering of his Cattle, the Defendant hath erected a stone wall, and so hath stopped this, that the Plaintiff wanted his water, and was thereby damaged: The Defendant pleaded in Bar an unity of possession in the Land, of the House and place to which, and of the Land through which, and of other Land of which, &c. and the question was, whether this unity of possession will extinguish this water-course: And the whole Court agreed, that the water-course was not extinct by the unity of possession, and the Defendants Plea was not allowed good; but the Judgment was given for the Plaintiff, and agreed, that for Commons, and private ways, and common appendant, and such like profit out of Land, these things will be extinct by unity of possession; but not so of publick ways, and water-courses, Bulstr. 3 part 34.

Ayre and Pincome. B. R. An Action upon the Case 38. Case was brought against B. a Freeholder for surecharging of the Common, and treading of the grass; and the Plaintiff had Judgment: It was held by Rolls, he might have this Action, by an Aftize at his Election, Stiles. 164. *Surecharging of Common.*

Cantrell and Chur ch. Trin. 43 Eliz. In Camera Scac. Case 39. *carii;*

Stopping
a way to
Common.

Assize:

Election
of Action

caril, for that in an Action upon the Case. The Plaintiff declares, that he was seized in Fee of a House and Land in D. whereto he had common appurtenant in such a place; and that he, and all thole whole, &c. had had a way from the said place, whereto, &c. And that the Defendant totaliter had stopped up his way whereby he could not come to his Common, but had altogether lost the use thereof, &c. Not guilty, Verdict and Judgement for the Plaintiff; Error assigned, that he ought to have had an Assize of Bulance, not this Action, because the Inheritance is in question: And is at the first, divers of the Justices and Barons held: But after divers Motions and Considerations of the Books of 5 Eliz. Dyer. 11 H. 4. 2 H. 4. And others, they resolved, that the Action was well brought, for he hath election to bring either the one or the other: For although there hath been a difference taken, where the way is so stopp'd up, that he loseth the use thereof altogether, and thereby his Common, there an Assize should lie; but where he is stopp'd but in part, and not totally, that there an Action of the Case lies, and not an Assize: They did now conceive it not to be any difference at all, for he hath election to have either the one or the other Action, especially as this Case is, where it appears not that the stopping was made by him who is the Tenant of the Freehold; but it might be done by a stranger, who hath nothing to do with the Land, or by one who hath but a Term therein; wherefore they all resolved that the Action was well brought: And thereupon the Judgement was affirmed, Croo. 1. last publisht. 845.

SECT

SECT. III.

BAyly and Merril. 13 Jac. B. R. The Case was, A man hired another to carry for him a lead of Maadit from A. to B. and tells him it was but Eight hundred weight, and promised to pay him for every hundred weight, Two shillings eight pence, and it was Two thousand two hundred weight, and he believing the man never weighed it, and killed some of his Horses by over-draught of them: In this Case it was resolved by the Court, that no Action will lie for this Deceit, because it was by his own folly and neglect, and he might have discovered it: As when one buyes a Horse upon a warranty that he hath both his eyes, and it is apparent he hath but one of them: But otherwise it is where the thing is secret, and lies onely in the Connuance of him that doth warrant, and cannot be known by him that buyes or makes the Contract, for the Law gives no remedy for voluntary negligence, Croo. 2. 386. And again, Bulstr. 3 part 94. 95.

Deceit.

By mis-information.

Warranty of a Horse

Tracies Case. 7 Jac. Trin. B. R. A. doth forge a Letter in the name of B. Master of C. falsely, for a Hundred pound to be delivered by C. to him, as a sum that he hath in his keeping for his Master, and A. seals this as with the seal of his Master, and C. having received this Letter by A. caused it to be read, whereby he understood that B. had directed this Letter to him, and hereupon delivered the Hundred pound to A. whereas in truth B. never wrote the Letter, but A. forged it, and upon this C. the Servant brings Action upon the Case against A. It was

Case 2.

Forgery of a Letter to get money.

was adjudged for him, and affirmed in Error, albeit it were brought in the name of the Servant; and albeit the word intelligebat were not well abridged and expessed, Croo. 2. 223. Jenkins Century. 8. Case 1.

Case 3.

my mis-
informati-
on.

What shal
be said to
be fraud.

Harvey and Young. 44. Case, and 45 Eliz. B. R. I am selling a Term of years I have, and whiles I am about it, I. S. saith, and affirmeth to one that is treating with me for the Term, that it is worth a Hundred and fifty pound to be sold, and thereupon he gives me so much for it, and it is too much; yet no Action will lie for the buyer in this Case: But if he that sells such a Term, shall warrant it to be of such a value to be sold; this may bear Action, Harvey and Young. 39 Eliz. Yelverton. 20.

Case 4.

sale, and
warranty
of sheep.

Pleading.

Redhead and Harper. An Action was brought in nature of a Deceit, That the Defendant had sold to the Plaintiff certain Sheep, and had warranted them to be sound, when indeed they were rotten: The Defendant pleads, they were sound at the time of the sale; & de hoc ponit se super patriam: The Plaintiff demurs, and it was adjudged for him, because the Defendant had taken Traverse to the cause of Action, viz. absque hoc, that they were rotten: And Issue may not be taken upon two Affirmatives, 4 H. 7. 13. 1 H. 7. 9. Noys Rep. 124. and Yelverton. 114.

Case 5.

Sale of
counter-
feit Jewels
knowingly

Southerne and How. H. 15 Jac. B. R. Action upon the Case; The Case in effect was this, The Defendant was possessed of three Counterfeit Jewels; and having Factors in Barbary, and knowing the Plaintiff to be there, he acquainted his Factor therewith, and the Factor came to the Plaintiff, and intreated him to sell those Jewels for him, selling him they were good Jewels; whereupon the

the Plaintiff not knowing they were counterfeit, sold the Jewels (being worth a Hundred pound) to the King of Barbary, for Eight hundred pound, and delivered the money to the Factor, who delivered it over to his Master; and the King of Barbary finding afterwards he was couzened, committed the Plaintiff to Prison, till he had paid him his Eight hundred pound back again: This the Plaintiff required of the Defendant, and for this the Action was brought; and the Court inclined in their opinions against the Plaintiff. For, first, they were not counterfeit, being worth a Hundred pound: Secondly, there is no warranty in the Case. Thirdly, it is done by the Servant, and the Master shall not answer for it. If a Servant have a general power, and exceed it, as make a warranty, or the like; this shall not bind the Master. 9 H. 6. 33. Doct. and Stud. 137. 3. The Servant had but a power, and he could not assign over that to another.

And by Dodridge, Justice; If a Goldsmith make Plate, wherein he mingles base, so as it is not according to the Standard, and sends his Servant to a Fair to sell it, who sells it for good Plate, according to the Standard; for this an Action will lie against the Master, *Ad quod*. Mountague assented, because it fails in the price of the Silver: But here it fails but in the value; for Jewels are sold by their valuation. (Note this diversity, *pretii & valoris*.) Haughton, Justice; If one command his Servant to sell an ill Horse, and the Servant sells him for a good one, whereby the Servant is enriched, and endangered, yet the Servant shall not have his remedy against the Master. And Dodridge cited this Case to be adjudged, 33 Eliz.

Counter-
feiting a
Clothiers
mark.

Co. B. A Clothier of Gloucestershire, sold very good Cloth, so that in London, if they saw any Cloth of his mark, they would buy it, without searching the rest. And another that made ill Cloth put his mark upon it, without his privy: And an Action of the Case was brought by him that bought the Cloth for this, and adjudged actionable, Croo. 2. 470. See also this Case somewhat otherwise reported in Bridgmans Rep. 126, 127. and Popham. 143.

Case 6.

servant
not pay-
ing cu-
stome for
his master
whereby,
&c.

Levison and Kirk. Trin. 7 Jac. In the Exchequer. Action upon the Case; That, whereas the Plaintiff was a Merchant, and 13 Martii, 40 Eliz. intended to go beyond Seas to M. to Merchandize, the same day and year at D. he acquainted the Defendant with his determination, and then in the same place appointed and trusted the Defendant, being his servant, to receive for him all such Merchandize and goods, which should be sent over, or carried or conveyed by the Plaintiff, in the same Voyage, and to pay for the custome of them, and to dispose of them, and convert them for the profit and commodity of the Plaintiff, and thereupon conveyed divers goods to the Defendant, and that the same day and year the Plaintiff took shipping, and sailed to M. and that within five dayes following, Twenty pieces of Silver were brought into the Port of S. consigned by the Plaintiff to the Defendant in the absence of the Plaintiff, and that the Defendant, on purpose to deceive the Queen of her Custome, and to make the Plaintiff to allow Custome unto him, he did take the said goods so consigned, and land them on the Land at S. aforesaid, the Custome not paid; whereby the Plaintiff lost his goods as forfeited for default of payment of Custome,

Custom, &c. Upon not guilty, and Judgement for the Plaintiff, Lanes Rep 68. and Crob. 2. 264.

Gravenor and Mere. Pasch. 44 Eliz. Co. B. Action upon the Case for Deceit; for that he sold unto him two Oxen, and warranted them sound, absolute infirmitate ubi reuera non fuerunt, &c. Not guilty; found guilty for the one, and not guilty for the other: Motion in arrest of the Judgement, because he was found guilty but of one, and the warranty alledged was joyned, ergo not the same warranty: Court held it good, for the Action is founded upon the Deceit, not upon the Contract; Judgement for the Plaintiff; Croo. 1. last published. 884.

Case 7.

sale, and warranty of Oxen.

Perten and Bud. M. 42 Eliz. Co. B. Action upon the Case; where Bud had brought debt in Co. B. upon a Bill of Forty pound against the Plaintiff; it appeared to the Court all but Eight and twenty shillings was paid. In Trin. Term; the Court ordered, that if the Plaintiff would not accept of the Eight and twenty shillings with such damages as the Court should assess, then the now Plaintiff should impart till Octab. Mich: That the Defendant knowing of this Order, had procured a nihil dicat to be entered. Demurrer; for that it was not averred that he tendered the Eight and twenty shillings: A Nihil dicat is the Act of the Court: But the Court agreed, that the Action would lie for this fault: As where one calls a protection in behalf of my Action, Croo. 1. last published. 795.

Case 8.

In a suit of law, by an undue prosecution.

William Pope and Lewis. H. 19 Jac. B. R. Action upon the Case; for that the Defendant 31. May, 19 Jac. had bargained with the Plaintiff to sell him a spate; the Defendant at tunc & ibidem sciens the said spate to be lame, & variis infirmitatibus

Case 9.

The sale and warranty of a mare.

pleading.

tibus deficere, viz. with Spavins, Splints, & ad laborandum impotentem, equam prædictam sanans, & absque aliqua infirmitate warrantizavit, & eandem equam prædictam 31 Maii, 19 Jac. pro Twenty pound apud London, &c. eidem Willo. falso & fraudulentè adtunc & ibidem vendidit, & sic dictus defendens fallaciter decepit, the Plaintiff of the said Mare, to his damage, &c. The Defendant pleaded not guilty, and found against him, and it was moved in arrest of Judgement, that the Declaration was not good. First, because he doth not say, warrantizando vendidit, for otherwile it may be, that the warranty was at one time, and the sale at another time, although they both were in one day, and then the Action is not maintainable; and although the precedents in the Book of Entries be in this manner, it was answered, that there it is warrant. vendidit, which being shortly writ, may be expounded warrantizando, which consopns it to the sale; but as it is, it may be otherwile intended, and then the Declaration is not good. Secondly, this Declaration is uncertain for want of the word (&) after the warrantizavit, for as it is, it is insensible. And of that opinion were Dodridge and Chan.berlain, but Lea, Chief Justice, did not deliver any opinion, wherefoze the Defendant appearing, the Plaintiff declared de novo, Cro. 2. part 603.

Case 10.

Selling of
another's
horse for
his own,
that were
another
mans.

Harding and Freeman. Mich. 1651. B. R. The Plaintiff (in an Action upon the Case) declared, that the Defendant did sell to him a Gelding, and upon sale thereof did falsely affirm to him, that the Gelding was his own Gelding, and that he bred him of a Colt, which was not true, but it was another mans Gelding; upon not guilty, Verdict for the

the Plaintiff, and motion to arrest Judgement.
1. For that there was no warranty with the sale :
But it was adjudged for the Plaintiff, Stiles. Rep.
310.

Francis against Leicester. Pasch. 16 Jac. B. R. A.
brought an Action against P. for that he false & de-
ceptive sold to him Two hundred and twenty
Sheep, affirming them to be his own, ubi re vera
they were the Sheep of I. S. In this case it was ad-
judged, That altho he did not shew that I. S. did re-
take his goods, or sued him for them, yet the Action
did lie : For the sale of goods by a man affirming
them to be his own, when he knoweth them to be a
strangers, is an offence and cause of Action, 42.
Ass. pl. 8. Croo. 2. 474.

Case 11.

Selling
sheep for
his own,
that were
another
mans.

Fowk and Boyle. Mich. 1652. B. R. The Plain-
tiff brought an Action upon the Case, for selling to
him false Bills of publick Faith, to the value of
Eight hundred pound, knowing them to be false,
with intent to deceive him, the Defendant demurs
to the Declaration : But after the Exceptions ta-
ken, rule given to enter Judgement for the Plain-
tiff, Stiles Rep. 343.

Case 12.

Selling
false Bills
of pub-
lick faith.

Brightwell and Robinson. Pasch. 1653. B. R.
An Action upon the Case was brought for delive-
ring in a false note of goods, for which Excise was
to be paid in the Office of Excise, whereby he was
compelled to pay Fifty pound, to his damage, &c.
upon not guilty, verdict, motion to arrest Judge-
ment, and it was adjudged for the Plaintiff, Stiles
Rep. 368, 369.

Case 13.

Delive-
ring in a
false note
of goods
for Excise

Dales Case. Deceit : For that the Defendant
sold to the Plaintiff others goods ; as his own goods,
ubi re vera they were the goods of a stranger ; and
it were not said, the Defendant sciens they were the

Case 14.

Selling
the goods
of another
for his
goods
own.

goods of a stranger; and it was adjudged against the Plaintiff, Croo. 1. last publisht. M. 27, 28 Eliz. Co. B.

Case 15. Russell brought Deceit against Vaughan, and declared, That the Defendant sciens that he had no Title to the Abbowlson of D. took upon him to be owner of it, and sold the profits of the said Abbowlson to the Plaintiff pro quadam pecunie summa; And in arrest of Judgement it was urged, that the Plaintiff did not aver ubi re vera; the Defendant had no Title. Et non allocatur.

Case 16. Furnice and Leicester. P. 16 Jac. Action upon the Case; for that the Defendant falso & deceptive sold unto him such a day Two hundred and twenty Sheep, affirming that they were his own Sheep, ubi re vera they were the Sheep of H. S. The Defendant pleaded not guilty, and found against him; And it was moved in arrest of Judgement, that the Action lay not, because he doth not shew that he had any damage, or that H. S. had retaken them, or sued him for them, as 42. Ass. 8. sed non allocatur; for the sale of goods which were not his own, but affirming them to be his goods, knowing them to be a strangers, is an offence and cause of the Action; and if he should tarry untill the goods were taken from him again, it might peradventure be mischievous unto him, and he should be without remedy; wherefore absente Montague, it was adjudged for the Plaintiff, Croo. 2. part 474.

Case 17. Sir William Clarks Case. Croo. 1. last publisht. p. 873. For that one I. S. being outlawed at the Plaintiffs Suit, and a Capias utlagatum, awarded against him, directed to the Defendant, Sherif of the County of Bucks, returnable at such a day, &c. and because he did not return the Writ, the Action was

selling
land
where to
he had no
title.

In the sale
of ano-
thers
goods.

Deceit in
an Officer
in the do-
ing of the
work of it

was brought, and Judgement against the Defendant, by nonsuit informatus, and upon a Writ of Inquiry of damages found to Forty pounds, and now William moved in arrest of Judgement, that an Action lies not for not returning the Writ: But he should be onely answered for his contempt; and of that opinion were Walmsley and Walberton; for in not returning this Writ, the Queens command is neglected, which she ought to punish: But by Walmsley, If the party that sues the Writ, shews to the Sherif, the party who is to be arrested, and delivers unto him the Writ, requiring him to make the arrest; if he doth so not, an Action upon the Case lies against him: But here non constat, whether the party was arrested or that the Sherif could find him: wherefore, &c. Kingmill, although the Queen may promise the contempt, yet the party having loss by not returning the Writ, may have this Action also; and the Clerks, into, There were many precedents, that such Actions have been brought, wherefore absents Anderson ad-journatur.

Chandelor and Lupus. Pascha. Jac. B. R. And in the Exchequer Chamber Action upon the Case, whereas the Defendant being a Goldsmith, and having skill in Jewels, and precious Stones, had a Stone which he affirmed to Lupus, to be a Bezares Stone, which he sold it to him for a Hundred pounds; where vera it was not a Bezares Stone; Defendant pleads not guilty. Verdict, and Judgement in the Kings Bench; Error was brought in the Exchequer Chamber, for that it is not Veron that the Defendant did warrant it to be Bezares, or did know that it was not so. And (Anderson onely against it) it was adjudged to be no cause of Action; and the Judgement was reversed, Croo. 2. 4. SECT.

And in the
Exchequer
Chamber

In the sale
of a coun-
terfeit
Jewel.

In the
Exchequer
Chamber

S E C T. III.

Case 1. **P**layer and Warner, & alios in the Exchequer Chamber. Upon Trover and Conversion of Two thousand load of Coals, the Defendants were found guilty of several loads, and severally, and not guilty pleaded for the residue, and entire costs, and one misericordia against the Defendants, and one misericordia against the Plaintiff pro falso clamore. And Error assigned, because the Judgement was against both the Defendants severally for the several damages, there being a Joynr Trover lisd to their charge: But it was adjudged for the Plaintiff, affirmed. And it was said, the Case did differ from Sir John Heydens Case. Co. 11. 5. Croo. 1. 39.

Case 2. Swaine and others against Stephens. Hill. 7 Car. 1. B. R. Trover and Conversion, whether this Action be within the Statute of Limitations. **Within what time it must be brought.** Court held, that all Actions upon the Case shall be brought within such a time, and Trover is included in those general words, Actions upon the Case. 2. That the Proviso (that if the Plaintiff be beyond Sea) he shall be saved; the same Equity shall be to the Plaintiff, the Defendant being beyond Sea. 3. That though barred by the Statute, as from the time of Conversion, yet requesting him upon his coming over from beyond Sea, to redeliver it, and he refusing it, if this be not a new cause of Action, and so he is restored to his Action. And so it seemed to be by two Justices, Croo. 1. 178, 179.

Case 3. Trover and Conversion against Husband and Wife,

Wife, ad usum ipsorum; moved that the Action
lieth not against Husband and Wife jointly for
conversion to their uses, during Coverture, for she
cannot convert to her own use: But Trover will
lie for conversion by the Wife before Coverture, or
by the Wife onely during the Coverture: But to
was adjudged for the Defendant, Rhemes and
Humsfreys. Pasch. 8 Car. 1. B. R. Croo. 1. 184.

Against
Husband
and wife.

Basset and Bainard. A. sells a Hundred load of
Wood of his Wives to B. to be taken by the Assign-
ment of the Bargainer, and after A. sells a Hun-
dred load to C. to be taken at his pleasure, B. assigns
his interest to D. the Vendor assigns, &c. C. takes
them away, and D. recovered in an Action of Tro-
ver, Noys Rep. 32 See in case 20, at large.

Case 4.

Chapman and Allen. Trin. 8. Car. 1. B. R. Croo. Case 5.
1. 197. It was resolved, that if Hine be put to one
to pasturage, and after the owner doth sell them
away to another, who demands the Hine of him
that doth depasture them, who denies the delivery
till he be paid for his depasturing. Afterwards a
Stranger by the appointment of the first owner
pays what was due, and had the Hine delivered to
him; that he that bought them may recover the
worth of them from him that kept them, and that
the demand and denial was a Conversion, and that
a man may not keep Cattle in such a case, till he be
paid; as a Taylor, or Innkeeper may, but he must
sue the owner of the Cattle for the Pasture.

About
money for
the pastu-
rage of
Cattle.

Rockwood and Fearar. M. 33, 34 Eliz. B. R. Case 6.
Action surtrover in London. The Defendant plead-
ed, that long time before the Conversion supposed
to be, I. S. was possessed of these goods, as of his
own goods at B. in Norfolk; and that he, before the
Conversion supposed, did casually lose them, and
they

Picads
they were
his own
goods.

they came to the hand of Jo. Palmer by Trover, who gave them to the Plaintiff, who lost them in London, and the Defendant found them, and afterwards did convert them to his own use by the command of the said I. S. as was lawful for him to do, and it was moved, that this is no Plea, but amounts to the general Issue: But all the Justices held it a good Plea, for it confesseth the possession and property in the Plaintiff, against all but the lawful owner. Nota, this Plea was devised by Cook, to alter the Tryal, Croo. 1. last publisht. 262.

Case 7.

For money
found.

Holiday and Hicks. M. 40 Eliz. B. R. Action upon the Case, Sur. Trover and Conversion of Five and twenty pound; upon not guilty, a special Verdict; That the Defendant being Servant, and Factor of the Plaintiff, sold Twenty quarters of his Masters Coyn for Five and twenty pound, and converted it to his own use; and Judgement was given for the Plaintiff: But afterwards upon a Writ of Error, it was reversed, and resolved, that this Action lies not for money found, unless it be in a Bag, or Chest, Croo. 1. last publisht. 638. 661. And to this all the Justices and Barons agreed. Hill. 42 Eliz. in Carrera Scaccarii; for when the Plaintiff lost the Money, he lost the property also, because it cannot be known, Croo. 1. last publisht. 746.

Case 8.

Pleaded
they were
his own
goods.

Candrick and Archer. M. 32, 33 Eliz. Co. B. The Plaintiff declared, That where he himself was possessed of Seven and twenty Ells of Linnen Cloth, as of his own goods, the same came to the hands of the Defendant by Trover, and he knowing them to be the goods of the Plaintiff, sold them, &c. and converted, &c. The Defendant pleaded, that as to Four and twenty Ells of the Linnen Cloth,

Cloak, long time before the losing; one Copland was possessed thereof, ut de bonis propriis, and sold them to the Defendant, who before any notice that they were the goods of the Plaintiff, and before any request, sold them to persons unknown: And as to the other three Cloaks, he was alwayes ready to deliver them to the Plaintiff, and yet it is upon these Pleas the Plaintiff did demur: And it was adjudged, for the Plaintiff, upon the insufficiency of the Plea, Leonards Rep. pl. 304.

Flewel in and Rave. M. 8 Jac. The Case was, Case 9.
That where A. B. and C. H. was indebted to C. in such a sum of Money; and B. in such a sum of Money was indebted to A. it was agreed between A. B. and C. that B. in discharge of his debt unto A. should discharge the debt of A. unto C. in paying; and delivering unto him certain commodities; which he then had in his hands and possession, being properly the goods and commodities of A. and which B. by, and with the consent of A. did assume to deliver them unto C. in discharge of the debt of A. unto him; and C. was contented to accept thereof: According to this agreement made between them, B. did not, according to his promise and undertaking, to discharge the debt of A. unto C. by delivery of the goods unto him, but contrariwise did convert them to his own use: After the death of A. and for this C. brought his Action upon the Case for Trover and Conversion ground, upon this Deceit: And it was agreed to be actionable, and Judgement was given by the Court: For if a man give goods to deliver over to another, if he to whom this Bailment was first made to bail over contrary to the trust in him reposed, doth not deliver them over as he was to have done, but convert them to his own use: he hath

Delivery
of goods
to deliver
over.

2700A
2700B

Conversion
on what.

hath by this deceit made himself liable to an Action both of the first Bailor, and of the party to whom they were to have been bailed over, and either of them may have this Action against him for this; but both of them may not have their Actions, but he that first begins shall go on with the Action: And the Court agreed this clearly, That this not bailing over, and delivery of the goods by B. the first bailor in satisfaction of the debt of A. and according to the agreement between A. B. that this doth amount in Law to make a Conversion: And that by this he hath made himself subject and liable to an Action to be brought by the party to whom he should have delivered the goods. Williams, If one deliver a Deed to deliver over, and the party do not deliver it over accordingly, he to whom it should be delivered, may have this Action against him. Dyer. 30. 21. pl. 125. 228. The whole Court agreed in this, that the Action brought by C. the Plaintiff, against the Defendant, being the first bailor; for not bailing the goods unto him according to the agreement, was well brought: And that here was a good Conversion in Law, Bullstr. 1. 68.

Case 10. Action sur Trover & Conversion of a Hundred Hens, and Sixty Ponkeys, and upon not guilty it was found for the Plaintiff, and moved in arrest of Judgement, because it was not shewed that they were reclaimed, as for a Hawk; but Judgement was given for the Plaintiff: So for a Parrot, for they be merchandize and valuable, Grimes and Shack. Mich. 8 Jac. B. R. Croo. 2. Rep. 362.

Case 11. Fines lost a Hawk, I. S. found him, and sold him to A. who gave him to Sir Jo. Spemer, who sold him over, and notwithstanding that he knew the Hawk; yet he is not in this case chargeable in an Action

About a
Hawk.

Action upon the Case upon the Trover, &c. And there it was said, that the Plaintiff ought to count expressly that he was tame and reclaimed. But Southcote held, that the words he was possessed ut de bonis propriis import as much, Dyer. 307.

Southcots Case. Coe 4. 83. It was resolved, **Case 12.**

A. do deliver goods to B. for to keep, and the goods be purloyned away, yet B. shall be charged in a Writ of Detinue: For to keep, and to keep safely is all all one. But if B. do take them to keep as his own goods, he shall not be charged with them: And if A. do pledge goods unto B. and they be purloyned, B. shall not answer them, for he had some property in them, and not a custody onely, and yet if he keep them after the day, and tender of his Money, let him look to himself. But a Ferryman, Inn-keeper or Carrier which taketh here, they are to keep goods, delivered to them, safely, and they shall not be charged if they be stoln or purloyned: But a Factor, or Servant (although he have wages) doing his indeavour, shall not be charged: And if that which is delivered in the first case be a Chest, and the Bayler keep the key of it, the Bayler shall not answer for any thing stoln.

Bailment of goods.

Countesse of Salops Case. Coe. 5. 13. It was **Case 13.**

resolved, That when any thing is delivered to another without any trust or confidence; and he to whom it is delivered, by negligence, suffer it to be spoiled, no Action will lie for this: As where Tenant at Will of a House tam negligenter. & improvide custodivit ignem quod domus illa combusta fuit; But for a voluntary Act, an Action of the Case lyeth without entry against such a Tenant, as where he shall voluntarily burn, or pull down the Houses, or cut the Trees, on his Tenancy at Will:

Bailment breach of trust.

So if my Bayle of my Horse, or other goods, voluntarily kill, or spoil it, I may have Trespass, or perhaps this Action: But in Cases where there is a confidence joyned with the delivery, there for a permissive or negligent waste or spoile; this Action may lie: As where I deliver a Horse to one safely to keep, and the Defendant tam negligenter custodivit quod ob defectum, interit: So where I deliver to my Shepherd my goods or Cattle to keep, and he suffer them, by his negligence to perish, I may for this have this Action.

Case 14. Howlet and Osborne. Hill. 37 Eliz. in Co. B.

Bailment Assumpsit, the Case was, that one delivered Ten pound to the Defendant to deliver to the Plaintiff, and the Defendant promised the Plaintiff to pay it to him, and upon this the Plaintiff brought this Action, and it was ruled, it will not lie. **Walmsly** said, if the Plaintiff had given a day for the payment thereof, it had been good, Croo. 1. last publisht. 380.

Case 15. Sir John Ratcliffe and Davis. Trin. 8 Jac. B. R.

In Trover for a Harband set with Diamonds; The Case upon a special Verdict was this, The Plaintiff was possessed of the Harband, and pawned it to one Whitlock for five and twenty pound, no time of Redemption was limited, the Wife of Whitlock (her Husband being languishing) by an assent of her Husband delivered it to the Defendant: Whitlock dies, the Plaintiff tendered the five and twenty pound to the Wife, being Executrix, which she refused, and it was found that the Plaintiff demanded it of the Defendant, who refused to deliver it, and converted it to his own use; And it was adjudged for the Defendant, and resolved in the case of a pawn, That he that doth pledge it, hath time

time to redeem it during his life, and his death to whom it is pawned, it is no impediment to it, but otherwise it is of the death of him that doth pawn it, for his Executor cannot redeem it, for albeit there be a condition, yet it is a personal condition that is annexed to it: And the tender of the five and twenty pound must be to the Executor, and not to the Defendant, for the delivery of it, albeit it be upon consideration, produceth nothing, but a custody in him to whom it is delivered, and is not like to a mortgage. And it was held, that by the tender of the Twenty five pound, and the refusal thereof, the property of it is presently reduced to the Plaintiff without claim; And it was held, that the Executor shall have debt for the five and twenty pound against the Plaintiff; and that if the pawn be of a perishing nature, as Corn, Oyl, &c., and no time of Redemption is set, and the party pay not his Money till it be perished, and no default be in him that had it in pawn, he shall have debt for his Money, and the other no remedy for his goods, Yelvertons Rep. 178 179. and Croo. 2. 244. 245. and Noys Rep. 137. Croo. 2. 244.

Debt without a contract,

Isaac and Clerk. Hill. 12 Jac. B. R. The case Case 16.
was upon a special Verdict. Rich. Adams did recover against one Lewis in the Conney Court Forty pounds thirteen shillings four pence for damages, upon this a cap. ad. sat. issued out against Lewis, and a Return made of a Non est inventus by Clerk the Defendant, Serjeant of the Peace upon which a Writ of Fieri facias issued out against Watkins, one of his pledges to be executed upon his goods, and upon three Writs of Back taken in execution. Isaac the Plaintiff being there present and to stop the sale of these three Writs of Back so taken by virtue

Pledge.

virtue of this Writ, the purse and two and twenty pound in it (for which the Action was brought) did (such a day and place) pawn and leave in Deposito) in the hands of Clerk, to the intent and purpose that he should keep the same usque 13 Martii next ensuing, being the Court day, and this only as a pledge for the re-delivery of the said three Butts of Sack to Clerk, upon his request, if Watkins in the interim did not obtain from Adams, to spare the leuying of this Execution; the Jury find no request made, nor that Watkins had procured the sparing of the Execution: But they find the request made by the Plaintiff of the Defendant, to deliver the purse, with the Money in it, and his Refusal to do it: And if upon the whole matter, the Court shall judge it to be a Conversion, then they find the Defendant guilty: But if they shall judge this no Conversion, then they find the Defendant not guilty: It was adjudged against the Plaintiff, Bullstr. 2. 314.

Case 17.

Denial a
Conversion.

East, Executor of I. S. brought an Action upon the Case of finding and converting of certain goods against Newman, and upon not guilty pleaded, the Jury found the special Verdict, viz. That the Testator was possessed of divers goods, and them lost, and the Defendant found them, and knowing them to be the goods of the Testator, upon demand denied to deliver them, and if this denial was a Conversion, they prayed the discretion of the Court. Fenner) I think that the denial is a Conversion, for when I lose my goods, and they come to your hands, by finding, and you deny to deliver them to me, I shall have an Action of Tretpals against you, as 33 Hen. 6. And the very keeping of Goods by an Executor shall be counted as an Administration, and by the same

same reason, the denial here shall be counted a Conversion. Gawdy, I am of the same opinion, for by 2 of Hen. 7. if I deliver you Cloth to keep, and you keep it fraudulently, I shall have Detinue, or an Action upon the Case at my pleasure, and by 20 H. 7. If a Baker contract for Corn, and the party do not deliver it at the day, the party may have debt, or an Action upon the Case, Tanfield.)

There was a Case in this Court, 30 Eliz. for the finding and conversion of a Horse; but here was no request made by the Plaintiff to deliver the Horse, for which Judgement was given against the Plaintiff, Curia.) This is not like our Case, for the Request and denial makes all the wrong in this Case, & adjournatur.

Request, denial to deliver.

Per Popham.) If a man find my Horse, and afterwards ride him, and then delivers the Horse unto me, and I bring an Action of Trover for the Conversion, it is no Plea that you have delivered the Horse to me before the Action brought, for you ought to answer to the Conversion.

Case 19.

Plea in Trover.

Basset and Mainard, P. 43 Eliz. B. R. Action sur Trover, and Conversion of certain Loads of wood; upon a special Verdict the Case was; Sir Thomas Palmer was seized of a great wood, and bargained and sold to one Cornford, and his Assigns, as many Trees as would make six hundred Coards of wood, to be taken by the assignment of Sir Thomas Palmer: Cornford assigns over his Interest to the Plaintiff: Afterwards Sir Thomas Palmer granted to the Defendant so much of his wood, as would make four thousand Coards of wood, to be taken at the Defendants Election; The Plaintiff afterwards by the assignment of Sir Thomas Palmer cut down the Trees in question, to make six hun-

Case 20.

Bargains of wood to be taken by Assignment, how to be taken.

bzed Coards; And the Defendant claiming them
 by virtue of his grant took them; And it was found
 that there was sufficient wood left for the Defendant
 to take his Four thousand Coards, &c. And
 upon this Verdict, it was moved, that here was not
 sufficient title found for the Plaintiff; For first, it
 is not found, that the bargain and sale was for any
 sum of Money, nor upon any Consideration, sed
 non allocatur; for it is intended to be so, being
 found by the Verdict; But if it had not been so
 found, it might peradventure have been otherwise;
 as *Primo* *Marix. Dyer. 91. is.* Secondly, it was
 alleged, that this grant to the Plaintiff is void;
 for until the assignment made by Sir Thomas Pal-
 mer, no interest vested in Cornford himself, so as he
 could not make any grant over; But all the Court
 held the grant to be good, for being made to him,
 and his assignee, he may make an Assignee, which
 shall enure as a nomination to one, who is to have
 by the appointment of Sir Thomas Palmer; and
 it may well vest in him as the interest also; And
 here he hath an interest before the Assignment
 made by Sir Thomas Palmer; insomuch as if Sir
 Thomas Palmer will not assign it in convenient
 time, he himself might take them; and therefore
 he may assign this interest, as *44 Ed. 3. 43. is.* But
 admitting the grant to the Plaintiff had been void;
 yet Popham said, that the Action was maintainable,
 because by the cutting down of them he had possessi-
 on, and a good title against the Defendant, and every
 stranger; and being cut down, it was not lawful
 for the Defendant to take them: For if one sells
 a thousand Coards of Wood to be taken at the
 Wendes Election, and afterwards, the Grantor
 himself, or a stranger, cuts down parcel of the
 Wood,

Wood, the Vendee cannot take that which is cut down: But he ought to make his grant good out of that which is growing: As if Estrovers were granted unto him, to be taken in a great Wood, and the owner of the Wood cuts down some Wood, the Grantee cannot take that which is cut down, but he must take his Estrovers out of the residue: And if all be cut down, he hath not any remedy, but an Action upon the Case: So here, although the Plaintiff had not a good Title, yet his having possession of them, being cut down, sufficeth, quod Gawdy & Clinch concesserunt; wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 819. and Noys Rep. 32.

Ledesham and Labram. H. 44 Eliz. B. R. Action Case 12.
 sur Trovers of Ten Angels, and converting of them: The Defendant pleads, that there was a wager betwixt the Plaintiff, and one Currance concerning the quantity of yards of Velvet in a Cloak; and the Plaintiff, and the said Currance, each of them delivered into his hand Ten Angels, and each of them agreed, that if there were Ten Wager.
 yards of Velvet in the Cloak, that then they should be delivered to the said Currance, and if not to the Plaintiff; and alledged in fact, that upon measuring of the Cloak, it was found that there were Ten yards of Velvet therein; whereupon he delivered them to the said Currance, which is the same Conversion, &c. And it was thereupon demurred, and agreed; first, than an Action of Trover lies of Money out of a Bag, or Chest: But for the Plea, Money out of a Bag.
 Gawdy held it to be good enough, for the measuring thereof is the fittest way for the trying it: And when it is so found by the measuring, he hath good cause to deliver them out of his hands to him, who

won the wager. But Fenner and Popham held, that the Plea was not good; for it may be, that the measuring was false, and therefore he ought to have averred in fact, that there were Ten yards, and that it was so found upon the measuring thereof: And he might well have pleaded the general Issue, and given all the matter in evidence; for it is but evidence; and when he delivered it, according to the intent of the bargain, it is not any Conversion; wherefore by the assent of Gawdy, absente Clinch, it was ruled, that Judgement should be given for the Plaintiff, unless other matter were shewn, &c. Croo. 1. last publisht. 870.

Case 22.

Custom
of Lon-
don, mar-
ket day
every day
market
place eve-
ry shop.

Taylor and Chambers. P. 3 Jac. B. R. Action sur Trover, of a Silk Quilt, a Tecture of a Bed, five Silk Curtains, a Petticoat and a Cloak. The Defendant quoad all besides the two last, pleaded not guilty; quoad them he pleaded, that the City of London is an ancient City, and that within the same is a Market every day for all goods to be sold in every part of the City, in every open Shop, every day besides Sundays and Holy-days, betwixt Sun-rising, and Sun-setting, so as one of the Contractors be a Free-man, and that he being a Free-man of the Company of Mercers, such a day, not being Sunday, or Holy-day, bought those things in his open Shop, wherein he had of long time used to buy such Wares, of one Hen. Cooper, for such a sum, and so justifies the Conversion; and upon this Plea the Plaintiff demurred: And upon the first motion at the Bar, all the Court conceived that the Plea was not good; for the Custom is too general, that every Free-man might buy all manner of Wares in every Shop, &c. for then a Scribener might buy Plate in his Shop, and the like,

like, &c. which is not reasonable; And here he being of the mystery of Percers, to buy Pettricoats and Cloaks, &c. It is not agreeable to his Trade. And Popham said, that it had been resolved, that such Cu some being found by a special Verdict, was unreasonable; wherefoze it was adjudged for the Plaintiff, Croo. 2. part 68. Yelvertons Rep. 178, 179.

Catford versus Osmond. Mich. 16 Jac. B. & Gold. Case 23:
Action of Trover brought for two Steers, the Defendant being an Attorney of the Common Pleas, justifies the taking as under-Sheriff, by reason of process from the Exchequer to buy of the occupiers of the Land of divers persons in a Schedule in the said Writ, named the debts therein specified, and doth not recite the Schedule; and he being under-Sheriff, took the Steers in the Land of the Plaintiff, which was lately one Stones, who was debtor to the King in Nine and fifty shillings, being behind upon Land; and exception was taken, for that it was not directly alleged that the Land such a day was the Land of the said S. The Writ commanded to levy the sums in the said Schedule mentioned, and if they could not, to take their bodies; and it was adjudged a good warrant to levy of the Occupiers of the Lands that were the said S. Fifty nine shilling.

For taking of Cattle by warrant out of the Exchequer.

S E C T. V.

Carlion and Mill. H. 8 Car. 1. B. R. Action upon the Case against the Apparator of the Bishop of Exceator, for falsly and maliciously causing the Plaintiff to be convented befoze the Consistorie Suits.

Case 1.

there, for incontinency, where there was no cause nor fame of any such thing; moved in arrest, &c. Because he did it as an Informer by virtue of his office, Court. An Action well lies, for it is averred he did maliciously, &c. without any Cause. Judgment for the Plaintiff, Croo. 1. 212.

Case 2. Moyer and Gray. Hill. 11 Car. 1. B. R. It was commanded the Defendant, being a Mayor, to accept of pledges of I. S. and to deliver his Cattle distrained for Rent: The Defendant pleads that I. S. delivered him Threë pound ten Shillings in Money for pledges: It was upon Demurrer adjudged a vicious Plea, for he may not do so, but must take men's pledges, at least one pledge according to the Law, Croo. 1. 322.

Case 3. Stone and Lingar, and others. Trin. 12 Car. 1. B. R. Action upon the Case was brought against them as Constables, whereas the Plaintiffs were Inhabitants, and possessed of Lands for years in the Parish of St. Martins, and were there liable to the payment of all duties for the reparations of the Church of the Parish, and to all Taxes within the same: And that the Defendant being Constable of Roxborough, falsely presented, that they were Inhabitants in the Parish of Roxb. and possessed of Lands in the Parish of Roxb. and chargeable there to the payment of such duties, by reason whereof they were compelled to pay such sums unduly, for which they brought this Action; and the Defendant was found not guilty; but had not double costs upon 7 Jac. chap. 5. but single costs onely, upon 23 H. 8. Croo. 1. 336.

Case 4. Salteton and Offly against Paine. Trin. 33 Eliz. B. R. The Plaintiff, Sheriffs of London, brought an Action upon the Case, for that the Defendant being

in Execution under their Custody for fifty three pound at the Suit of Spicer, had escaped, the said Spicer not satisfied, for which they were compelled to pay the debt: The Defendant pleads, confessing all the matter, and that after his escape Spicer had acknowledged satisfaction upon Record: And upon this it was demurred, and adjudged clearly for the Defendant against the Plaintiff, but held clearly that an Action upon the Case lieth against a Prisoner for an escape out of Execution, to the intent to make the Sheriff chargeable with the debt, Croo. 1. last publisht. 234. F. N. B. 130. 13 H. 7. 2. 14 H.

7. 1.

Langton and Gardiner. Pasch. 38 Eliz. B. R. Case 5.
Action upon the Case against the Sheriff of the County of Surrey; whereas the Plaintiff sued a Latitat against D. intending to declare for debt on an Obligation, and thereupon the Defendant arrested him, and at the day returned Cepi corpus, & paratum habuit, &c. And for that he appeared not at the day he brought this Action, and it was demurred; and the Sheriff shewed to the Court, that he had taken Bond according to the Statute; but this not being pleaded, the Court could not take notice of it; wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 450.

Barton and Adleworth. Mich. 40. Eliz. B. R. Case 6.
Action upon the Case; whereas he pursued a Latitat against I. S. intending to declare in debt upon an Obligation of a Hundred pound, wherein he was bound to him, and delivered that Writ to the Sheriff of Bristol to execute it, and advertised him of the cause of Action, and his intent to declare against him in debt, &c. And that the Defendant being Sheriff, arrested him by virtue of the said Writ,

Sheriff
suffer an
escape.

Writ, that the Defendant had let him at large, absque aliqua securitate inventa for his appearance, and at the day returned Cepi corpus, and that the said I. S. did not appear at the day, but hid himself: and that upon a Habeas Corpus awarded, he returned paratum habeo, which was false, whereby the Plaintiff was delayed in his Suit, whereupon he brought this Action. The Defendant pleaded, that he took Sureties according to 23. H. 6. and traverseth, that he let him at large, &c. And it was thereupon demurred. The Court held the Plea and Traverse good; for the Statute appoints him to let at large upon Bail, and therefore he is compellable to take Bail; and it is in his discretion what Bail to take. And Popham said, if he take one Surety, it is sufficient; wherefore it was adjudged for the Defendant. Croo. 2. last publisht. 625. also.

Case 7.

False Return of a Sheriff.

Parks and Mosse. P 32 Eliz. B. R. Action for Trover; The Defendant pleaded a Recovery against I. P. and that a Fieri Facias was awarded to the Sheriff, and after the Writ awarded and delivered to him, I. P. dyed possessed of the goods, and made the Plaintiff his Executor, and afterwards the Defendant by force of the Sheriffs warrant, took these goods in Execution, as Bailiff to the Sheriff, and delivered them to him, the Plaintiff, that the Sheriff returned upon the Writ Tarde; and upon this it was demurred in Law; and resolved, that the party dying after the Writ of Execution was awarded, and before it was served, that it may be served in the hands of the Executor or Administrator: for by the Execution awarded, the goods are bound, and the Sheriff need not to take notice of his death. 26. H. 7. 5. Dyer. 76. And that the false return of the Sheriff shall not make the Bailiff punishable; for that

that he did lawfully, bring a Baylis Errant, and a meer servant to the Sherif, and not a Bailif of a Franchize. Croo. 1. last publisht 181.

Baldrie and Johnson, Hill 42 Eliz. Co. B. Action upon the Case against the Defendant, Gasloz of the prison in Bury; for that a plaint being before the the Baylit of the same Wille according to the Custome there, they directed a warrant to the under-Baylifs to take the party, ita quod habeant corpus ejus coram Ballivis ad proximam Curiam ibid. tenend. viz. such a day. And the under-Baylifs arrested him, and committed him to prison sub custodia of the Defendant: And after Verdict for the Plaintiff it was moved in arrest of Judgment. That this Action lyes not against the Defendant, for the prisoner was not committed to him by any lawful Authority: For the under-Baylifs had authority to take him ita quod, but to commit him to any other person, for that is on their own head: And unto whatsoever place they will commit him, they shall retain him but as servant to the under-baylifs, and it is the under-Baylifs house: and an Action lyes against them, if they have him not at the day, &c. and not against any other. Croo. 1. last publisht. 743.

Case 8.

Undue proceed-
ing.

Thurstown Vernions. Error to reverse a Judges Case 9.
ment in Bristow, in an Action upon the Case, declared, that the Defendant brought an Action against him at the Suit of one Hall, and without his privity, and therein did arrest and imprison him, by reason whereof all his Creditors came upon him, and thereby he had lost his Credit, &c. Judgment was affirmed upon this difference, where a Man that

Suing of
one in anothers
name
without
his privity.

that hath a just debt luech, and by this occasion all the Creditors falls upon the Debtor with Suits, and he is undone: But where another shall do it without his privity in the name of him without whose privity he doth it; there this Action of the Case will lye. Trin. 15 Car. 1. B. R. March. Rep. 49.

Case 10.

For adou-
ble vexa-
tion.

Waterer and Freeman. The Case was that the Defendant had at Westminster sued out a Fieri Facias upon a judgement given against him for the Defendant, in Trespals, who took the Plaintiffs goods to the value of the damage, and so made his return, and that the goods remained on his hands pro defectu emptoris: And that the Defendant knowing this to be to the intent to vex and double charge him, afterward sued out another Fieri Facias to the Sheriff, who delivered it to the same Sheriff, who levied it of other goods of the Plaintiff, and paid it over to the Defendant: And it was adjudged for the Plaintiff. Hobb. pl. 257. and 350. and Brownl. and Goldsb. 12.

Case 11.

Attorney,
deceit in
him.

Adams and Ward. Trin. 21 Jac. It was said, in an Action upon the Case between one Adams, and Ward an Attorney, that whereas one Hennings sued Adams in an Action of debt, and Adams retained Ward to be his Attorney, and gave him warrant to plead the general Issue, and Ward suffered the Judgment by nihil dicit, that this was not any cause of Action, except it was by Cobin, and if he had not laid his Declaration so in this Case, he could not have recovered: And at another day it was agreed, that the Cobin was not traversable by Plea, but only in evidence at the Barr. Winch. Rep. 90.

Case 12.

Escape.

Apleton and Burr M. 34. 35. Eliz. B. R. Error of a Judgment in the Common Bank in an Action of the Case against the Plaintiff, Sheriff of E. for suffering

suffering a prisoner to escape that was arrested by a Capias upon an Original Writ: and Judgment was there given for the Plaintiff, and affirmed here in a Writ of Error. Croo. 1. last publisht. 289.

Hawkins and Mildmay. M. 41. Eliz. B. R. Action upon the Case against the Defendant, for that upon a Capias directed to him against I. S. he being Sheriff of Essex, directed his Warrant to such a Bayliff of a Liberty, to arrest the said I. S. who arrested him accordingly, and that the Defendant well knowing thereof, had, notwithstanding the day of the Return, returned Non est inventus; and upon this account the Defendant demurred: and it was resolved by the whole Court, that the Writ well lay for this matter. And Anderson said, If the Sheriff in this Case had returned, that he hath sent to the Bayliff of the Liberty, &c. who had given him answer, that he had arrested the Body, it had been good, and the Sheriff should have been discharged and process should have issued against the Bayliff of the Liberty, to bring in the Body: But here in the principal Case, the Writ abated by the death of the Plaintiff before the Judgment. Croo. last publisht. 729.

Action
gone by
the death
of the
Plaintiff,

Boles and Lassells. M. 43. Eliz. B. R. Action upon the Case, where a Latitat was directed and delivered to the Sheriff of the County of Not. against I. S. arrested by him, and he set him at large; and after returned Languidus in prison, whereby he was delayed &c. And the Defendant confessed the receipt of the Writ, and Arrest, and leith, he did afterwards Bayl him according to the Statute of 23. Hen. 6. And hereupon a Demurrer. And it was adjudged for the Defendant; for, for his return he is onely finable. Croo. 1. last publisht. 832. Noys Rep. 39.

Case 14.
Escape
and Re-
turn of a
Sheriff.

Parkust

Case 15. Parkhurst versus Powell. Mich. 15. Jac. Br. and Gold, An Action of the Case for a false Return of a Capias utlagat. and declares that he prosecuted a Capias utlagat. directed to the Sheriff of Denbigh, where the Defendant inhabited, and delivered the said Writ to the Sheriff to be executed, and the Defendant being then in the company of the Sheriff, and might safely have arrested him; did not, but suffered him to escape, and returned that he was not to be found; and upon not guilty pleaded, it was tryed in the County of Middlesex, where the Action was brought, and moved in arrest of Judgment; that the Tryal ought to be in Denbigh, because the not arresting was not the principal matter, but because the Action was grounded upon double matter, the Plaintiff had his election to bring his Action, either in the County of Denbigh or Middlesex, by the whole Court.

Case 16. May against Proby, and Lumbley, Sheriffs of Midd, for suffering William Allen, who was arrested at his suit upon a Bill of Middlesex for three and thirtie pound to escape; they were sued in an Action upon the Case: The Sheriffs plead, that after the arrest, they leading him towards London, to the Goal, he was rescued from the Bailiffs by I. S. and I. D. And it was thereupon demurred, and at last adjudged for the Defendants; for the arrest being upon a mean proceſſe, and not upon execution, the Sheriff is not bound to take the proſſe comitatus with him, and therefore in such Cases the Rescous is a good Return, and to say that afterward he was not found in their in their Bailiwick, and thereupon proceſſe shall go against the Rescuors: But if the prisoner had been once in the Goal, the Sheriff ought then at his peril to keep him safe, and

Where a
Rescous is
a good
Return:

a Rescuous from thence is no excuse for him. And upon process of execution, as Cap. ad Sat. and Cap. utlagat. After Judgment such a Return is no excuse for him, either against the King, or party, for he at his peril must keep his prisoners, for there his process is determined, and he cannot have the same Writ again, as he may in the principal Case here: For here he may renew his Writ, and have also his Action upon the Case against the Rescuors; it was adjudged for the Defendants, Vide 3 H. 6. Attachment 1. Dyer. 212. 16 Ed. 4 3. 6 H. 7. 12. Croo 2. 419. Hill. 14 Jac. B. R.

King against Sir Euseby. Action upon the Case, for suffering one Burdet to escape, who was indebted to him in seventy one pound, and arrested upon a Latitat sued out by him, intending upon his appearance and Wap, given to declare for that debt, where he was arrested by Sir John Iseham the former Sheriff, and left in prison, the Defendant suffered him to go at large without finding Sureties for his appearance, upon not guilty, all this was found by Verdict, That Sir John Iseham arrested him, and at the day, &c. returned Languidus &c. and afterwards in exitu ab officio suo delivered him unto the Defendant as a prisoner for this cause, and the Defendant suffered him to go at large. And if &c. And without Argument it was adjudged for the Plaintiff, for this permission to escape is just cause of Action: For by this he is defrayed or delayed of his Action: And although it be found, that the other Sheriff returned Languidus, &c. which is more than is in the first Declaration, yet that is not material to the Plaintiff, he remaining alwayes in prison, and that was to excuse his bringing of

Case 17.

Escape

of the Prisoner at the day; wherefore it was adjudged for the Plaintiff, Croo. 2. 318.

Case 18.

Vexatious
Suits.

Weald and his Wife, and Pease. Action upon the Case was for this; That the Vicar of the Parish had falsly and maliciously presented them in the Spiritual Court, that they made Way on the Sunday, &c. whereupon they were cited and bered; it seem'd by the Court not actionable, for the Action should have been brought by the Husband alone; and this presentment was in a course of Law, Croo. 2. 355.

Case 19.

Suing in
an impro-
per Court.

Lady Waterhouse and Bawd. M. 4 Jac. B. R. Action upon the Case; It was resolved by the Court, that no Action of the Case will lie against a Parson, for suing in the Spiritual Court for a thing demandable there, although happily he have no cause of Action, as for Tithes of Grats, Trees, or the like: But if any man shall sue in the Spiritual Court, for a matter which appears by his Libel, is not leable there, nor the said Court hath any Jurisdiction of, but the Common Law hath Jurisdiction; there an Action of the Case lieth: But if a Suit be there for any thing demandable, by any thing which appears by the Libel, and by the Defendants Plea, or by any Collateral matter, he is barrable there, no Action of the Case lieth: And it was there held by the Court, that where a Statute doth prohibit a thing, and adds no penalty, that an Action will lie for doing against the prohibition of that Statute: But it must be laid tam pro Rege, quam pro seipso, and this Action being brought only by the party, and not tam pro Rege, &c. therefore they all held, though otherwise an Action may lie, yet for this cause it was not well brought; wherefore it was adjudged for the Defendant, Croo. 2. 134.

Bray

Bray and Partridge, B. brought an Action upon Case 20. the Case, that P. sued for Tithes, and recovered, because there was nisi testis singularis to prove the payment, when in truth he had paid it before two, but now one was dead. Adjudged, that this Action doth not lie, because the cause was merely Spiritual; and it differs from 8 Ed. 4. 13. For there the Composition was a temporal Contract, although it was for Tithes, Noys Rep. 37.

Suit for
the same
thing
twice.

Mason and Bavy against Dixon. Trin. 2 Car. 1. B. R. The Sheriff arrests A. upon a Latitat at the Suit of B. A. escapes, B. makes Executors, and dyès; And they bring an escape, and it was doubted if it lies, the Judges were divided, because it is but upon a mean process, and not as where it is upon an Execution, Coe. 5. 27 Trover by an Executor for a Conversion heret in vita Testatoris; and there this difference agreed, That the Executor shall have the Action, where the thing it self is to be recovered, but not where damages onely are to be recovered, Noys Rep. 87. Latch. Rep.

Case 21.

For Executors, or not.

Moore and Sir George Reynell, Marshal of the Case 22, Marshalse, in Action upon the Case, the Case was in effect, The Plaintiff had a Judgement for debt in the Common Pleas, and the Defendant was outlawed after Judgement, and upon a Cap. utlagatum he was arrested, and the Marshal suffered him to escape; and it was adjudged for the Plaintiff, albeit the Plaintiff never prayed he might be in Execution, and albeit he did escape against the will of the Defendant; and there agreed, That in all Cases where the Defendant may have a Cap. ad Sat. and the Defendant is taken by a Capias pro fine, there he shall be in Execution presently, if the Plaintiff will without any prayer: But where the Plaintiff hath a Judge-

Escape.

Judge-

Judgement, and lets pass his time, so that he cannot presently by Capias, nor by Fieri facias, there if the Defendant be taken by a Capias. pro fine, he shall not be in Execution without prayer, Bridgm. Rep. 7.

Case 23.
Sherif not
arresting,
having a
writ.

Parkinson and Powell. In an Action of the Case, brought in the County of Midd. declares, that he had recovered against one A. in an Action of debt, and had a Cap. utlagatum, and that he had delivered it to the Defendant, being Sheriff, &c. And that the Defendant was often in his Company after, within his Bailiwick, and that yet he had returned a non est inventus; and Judgement was given for the Plaintiff; And that the Action was well brought in Midd. where the Common Bench is, albeit the ground of the offence be in Denbigh. Noys Rep. 22.

Case 24.
Sherif not
arresting,
false Re-
turning.

Laycock and his Wife against the under-Sherif of Wilts, in an Action upon the Case; They shewed that they had sued a Latitat against Wilmot, and that the Husband had delivered it to the under-Sherif, when W. was in presence, and that he was the under-Sherif appointed, and did execute that office, and yet he returned non est inventus in deceptionem; and upon this the Action was brought; but the Court seemed to be against it, and that it cannot be brought against the under-Sherif, for he is no Officer to the Court, for the Sheriff himself is to be amerced for all defaults, neglects, and falsities of the under-Sherif, but he shall not be imprisoned for him, Noys Rep. 90.

Case 25.

Lemasons and Dicksons Case. B. R. M. 2 Car. 1. The Case was, one Pierceval Sherwood was indebted to Susan Clark, who brought an Action of debt by a Bill of Middlesex, which is in nature of a Writ of Trespass against him, and Sherwood up-

on

on a mean process was arrested by the Defendant (being Bailiff of the Liberty of White-Chappel) and being in his custody, he suffered him to escape; after Susan Clark made the Plaintiff her Executor, and dyed, and then the Plaintiff brought the Action against the Defendant upon this escape; and no Judgement was given, but the Judges seem'd to be divided, or rather to incline against it; That this Action will not lie for the Executor, after the death of the Testator, for that done in the life of the Testator; but if the Escape be after his death, for that it will lie: But they all agreed, if it were upon an Escape after Judgement, that the Action would lie by the Executor, Popham Rep. 191.

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Shorfbey and Waller, and Bromley. Pasch. 7 Jac. Case 26.
In the Exchequer. Action upon the Case: The Case was, W. and B. conspired that B. should commence a Suit against the Plaintiff, then dwelling in Middlesex, and worth Five thousand pounds, and that the Defendants knowing thereof, maliciously and falsely agreed, that the said B. should lay his Action in London, and prosecute it till the Plaintiff were outlawed in the said Suit, to the intent that his goods should be forfeited to the King: And after, in performance of the Agreement aforesaid, the Plaintiff suggested that he was dwelling in London, and laid his Action here, which was prosecuted until the Plaintiff was here outlawed, to his damage, &c. And it was adjudged for the Plaintiff, Lanes Rep. 50.

Conspira-
cy for a
vexatious
suit.

In an Action sur le Case, it was resolved per totam Curiam, that if a Sumner return one versified upon his oath in Court Christian, where in truth he was not, and he is pronounced Contumax, and after he is excommunicated, he shall have an Action

Case 27:
False Re-
turn by a
sumner.

sur le Case, for here is injuria & damnum; and in such Case the Plaintiff shall have Judgement to recover, for although the proceedings and oath touching this matter, are Ecclesiastical, yet the damage is temporal, for he is disabled to sue in any Court.

Perjury.
Where
Action
may lie
for this.

And it was resolved, that Perjury, by which damages do accrew, may be punished as a Misdemeanor at the Suit of the King; and also the party may have an Action upon the Case to recover damages, for it should be a very great defect in the Law, and encouragement to the parties, if men may commit perjury with impunity: And for that reason if Jurors use perjury themselves, an attachment lieth at the Common Law; for so it appears by Glanvil. lib. 2 cap. 29. 15 H. 8. title. 75. 6 H. 3. it. 73. &c. 75. and in the time of Ed. 1. Attaint 70 for the first Act, which gave the attaint, the Statute of West. 1. cap. 38. vid. F. N. B. 109. vid. 2. 7 H. 6. 25. One who was to be a pledge affirmed upon his Oath, that he could dispend forty Shillings per annum, and upon re-examination, he confessed it false, for which he was committed to the Fleet, until he made a Fine, which proves that the false Oath was the wrong and injury, and punishable by the Law, & ex consequenti, when damage follows to the party, he shall have remedy by Action upon the Case. In like manner it was agreed, that if one make a false Affidavit, by which the party is arrested and molested by process of contempt, he may have an Action sur le Case, and recover damages; and although that when the matter is meer Ecclesiastical, the Court Christiane may punish pro salute animæ, yet they cannot award any damages to the party; for if one within holy Order be beaten,

beaten, they may proceed against the Delinquent, pro salute animæ, but the Priest ought to recover his damages by Action of Battery; for, notwithstanding that, they may punish the said Sumner in the Case at the Bar, for perjury and false Certificate, yet the party grieved shall recover his damages at the Common Law; And although the matter be merely Ecclesiastical, yet if the party grieved hath damages, either by any wrongful proceedings of the Judge, or Misfeasance, or Nonfeasance, or falsity of any Minister, or by unjust prosecution of the party, the party grieved may have an Action sur le Case, and recover his damages. Doct. and Stud. 118. 119. Action sur le Case lieth against the Ordinary, for a wrongful excommunication touching any thing out of his Jurisdiction, so there be many good Cases; and the Case in Fitz. 47 H. 6. 8. If an Archdeacon refuse to induct the Clerk, &c. he shall have an Action upon the Case, which was affirmed for good Law by all the Court, which agrees, 26 H. 8. 3. 2. and true it is, that it is held in 38 H. 6. 14. That in such Case he shall have remedy against the Archdeacon, to punish him; but saving the opinion there, they cannot award him damages in such Case, but he shall recover them at Common Law. For F. N. B. 92. If a man proceed against a prohibition, the party may have an Action upon the Case against him, for prosecuting in Court Christian, vide Trin. 20 Ed. 3. Rot. 46. in the Treasury. Richard Trefils Case, there he recovered damages against the Bishop of Norwich, by him Excommunicated after prohibition; Episcopus adjudicatur esse illicitum expugnatorem Authoritatis Regiæ, & querens receperavit decem mille libras, simile. Pasch. 13 Ed. 3. Rot. 78.

Spiritual
Court.

Philip de Hardschals Case. Hill: 32 Ed. 3. Rot. 78. Sir Thomas Seaton, Knight, recovered against Lucy, who was the Wife of Robert Cockside, for suing to Rome, pro transgressionibus facta per ipsum Thomam, pro captione bonorum & catillorum suorum & pro debitis & inde pronunciavit fecit sententiam excommunicationis, &c. he recovered damages by Verdict to Thre thousand pound, &c. Trin. 37. Ed. 1. Costs were recovered against the Arch-Bishop of Canterbury, forty pound pro damnis, per quod ipsum excommunicavit pro executione brevis Regis pro manu fortia amovenda; ideo Episcopus capt. Mich. 29 Ed. 3. Rot. 19. similiter. And divers other Records you may see in my Book of Precedents. Co. part 12. 128. 129. Trin. 16 Jac. Rot. 590 Margaret Evans against Wilkins. Action on the Case, for that the Plaintiff the 12 Septemb. 15 Jac. did retain the Defendant to be her Shepherd, &c. and that the Defendant, in Consideration of Six pence to him paid by the Plaintiff, and of Thre and thirty shillings four pence of his Salary to be paid to him for a year, and in Consideration that the Plaintiff did assume to pay the Thre and thirty shillings four pence to the Defendant, and to find him meat, drink, and lodging for the said year, and to permit the Defendant to have pasture for Twelve Sheep, with the Sheep of the Plaintiff, did assume to serve the Plaintiff as a Shepherd for one year, from Michaelmas next, &c. and to keep her Sheep, to which the Plaintiff giving credit, did not retain any other Shepherd; and the Plaintiff did aver, that he was ready to pay the Defendant the said Thre and thirty shillings four pence, and to provide him meat, &c. and to permit him to have pasture for Twelve Sheep, with the Sheep

Sheep of the Plaintiff, yet the Defendant did not
feed the Sheep of the Plaintiff, although required,
the 4. October, 15 Jac. whereby many of her Sheep
died, ad damnum Forty pound. And after, Scil.
Hillar. 16 Jac. Judgement was given for the Plain-
tiff by the Court, 12. 128.

Dampont and Simpson. M. 38 Eliz. Action upon Case 28.
the Case the Plaintiff declared, that he had given
one Spilman certain Jewels to traffick with them
beyond the Seas, and that he had not sold them
but delivered them to the Defendant, who had spo-
led them, whereupon the Plaintiff brought an Acti-
on against Spilman, and upon not guilty pleaded,
they were at Issue, and the now Defendant at that
evidence did upon his Oath aver, that the Jewels
were worth but Two hundred pound, whereas they
were worth Eight hundred pound, by reason
whereof the Jury gave indeed but Two hundred
pound damages; and for this false Oath he brought
this Action; upon not guilty, found for the Plain-
tiff, and assessed Three hundred pound damages;
and now moved in arrest of Judgement, that the
Action will not lie: And so it was adjudged, Owen.
158. See 20 H. 7. 11. Dyer, 243.

Knight and Copping M. 10 Car. 1. Co. B. Ro-
bert Knight brought an Action against Valentio
Copping, one of the Attornies of this Court and
Court, That whereas one Edward Loft had
brought an Action of debt for Thirty pound against
him, and thereupon such process was, that a non
prof. was entered, and Costs of Thirty shillings
assessed for the now Plaintiff, the now Defendant
being Attorney for the said Edward Loft having
notice thereof, untruly and maliciously procured a
Judgement to be entered for the said Edward Loft,
Case 29.
For en-
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against the now Plaintiff, and sued Execution against him, whereby he was taken and imprisoned till he was delivered by a Writ of Superfedas: And the Plaintiff had Judgement in it, Huttons Rep. 125. 126.

Case 30. Metcalfe and Hodson. Pasch. 8 Car. 1. Co. B.

For taking of insufficient bail.

The Case was, Metcalfe brought an Action upon the Case against H. and W. late Sheriffs of the City of York, and Count, that whereas time out of memory, there was such a Court there had power to arrest, and take bail, &c. And that there the Plaintiff had brought an Action against one Smith, the now Defendants (being Sheriffs) had taken insufficient bail of him, &c. And in this Case it was adjudged, that this Act was done by them as Judges; and for this Judicial Act, no Action lay: But if it had been with fraud, or corruption, as for reward, or the like, there it may be otherwise; and so it is for the bails taken in the Kings-bench, Common-Bench, and Exchequer; for what they do in this, shall be taken as done by them as Judges of the Court, and not as Gaolers, Hutton. Rep. 126.

Case 31. Cockshall and the Mayor of Boalton. M. 31, 32 Eliz. Co. B. H. Cockshall brought an Action upon the Case against the Mayor, Town-Clerk, and Gaolers of Boalton, &c. and declared, that where

Practice to delay a suit, sufficient and escape.

he had affirmed a Plaint of debt in the Court of the said Town before the Mayor, &c. against J. S. and thereupon had caused him to be arrested. The Defendants did conspire together to delay the Plaintiff of his said Suit in peril of his debt, had let the said J. S. go at large without Bail, and it was adjudged to lie for the Plaintiff for this Conspiracy, albeit the taking of Bail were a Judicial Act, Leonards Rep. pl. 269,

Edwards

Edwards and Tedbury. M. 31, 22 Eliz. Co. B. Case 32. The Case was in effect this, Edwards of London was indebted to A. of the same City, Edwards delivered goods to one Tedbury a Carrier in Excester, to carry thither, and the goods being in his hands, A. caused them to be attached for the debt of Edwards, the Carrier being then privileged in the Common Pleas by an Action there depending: And it was adjudged that the goods were privileged in the Carriers hand, Leonard. Rep. pl. 268.

Priviledg

Keylar and Tyrrell. M. 12 Jac. In an Action Case 33. upon the Case brought against the Sheriff of N. for an escape; upon a not guilty, and special Verdict, the Case was this, That a Capias did issue to the Sheriff to take one (John) which was by a wrong name, the Sheriff returns a non est inventus, and upon this a Testatum issued out to him, and therein named him by his right name; upon this the Sheriff took him, and had him in execution, and afterwards suffered him to escape; And Judgment was given for the Plaintiff, and therein it was agreed by the Court, That if a Sheriff arrest one, and have him in Execution, be the process by which he is taken, erroneous, or not, if the Sheriff suffer him to escape, he will be chargeable: And so in this case, albeit the first Capias were by a wrong name. Bulstr. 2. part 256.

Escape
suffered
by a Sher-
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May and Proby, and Lumley; Sheriffs of London. Trin. 14 Jac. B. R. In an Action upon the Case for an Escape brought against the Sheriffs of London, and Middlesex, who plead, that they had taken the party upon a Latitat, and that in bringing of him towards the Gaol; Rescous was made of him, and so returns the Rescous as the same was; and it was adjudged a good return; and so a

Escape.

Rescous.

god Plea here; and Judgment was given against the Plaintiff. Bulstr.

Case 35.

Rescue.

Lyn against Cunningham. The case in this Action was, an Action of debt was brought by a Plaintiff, who recovered, and had Execution by Capias ad Sat. and the party arrested by the Sheriff, and he was rescued by the Defendant; and in this Case Judgment was given for the Plaintiff, and it was held, the Action will lye. Herleys Rep 95.

Case 36.

Vexatious Suits.

Pasch. 1655. B. R. It was said by Rolls, Chief Justice, that an Action upon the Case will lye against one that brings vexatious Actions against another, or for entering of Actions of a great value, to force his adversary to put in a great Bail, where he hath but a small cause of Action. Stiles Rep.

Case 37.

Undue Proceed-
ings.
Practice.

Lamb against Duff. Pasch. 1649. B. F. Upon Affidavit, the Court was informed, that Lamb had arrested Duff after a Verdict found for Lamb against him, in a feigned Action, to the intent that so he might have him in custody, when the Judgment is entered against him, and for no other cause, and therefore prayed the party might be discharged: and the Court answered, that this was irregular, and might not be as in a Latitat against a man without cause of Action; the party grieved may have his Action upon the Case for it: Ordered that an Attachment be granted, if he will not discharge the party, or else let him shew cause to-morrow why he should not discharge him. Stiles pl. 221.

Case 38.

Undue Proceed-
ing.
Breach of
Trust.

Lawrence and Harrison. Mich. 1654. B. R. The Plaintiff brought an Action upon the Case against the Defendant, his Attorney, for delivering a Fieri Facias against him in the Suit, wherein he was Attorney for him to the Sheriff, and procuring it to be executed against him, contrary to the trust reposed in

the same Waplift to arrest him at the Suit of the said Phillip Perry Senior, that it was directed unto them Conjunction and Division that they were not known Waplifts, that upon the 8 of Jan. 12 Jac. in the night about six of the Clock, they entered the House of Robert Marks Senior the door being open, and William Pawly being present, the said Phillip Perry Junior laid his hands on him, and then having both the Warrants in his pocket, said unto him, I arrest you by virtue of a Warrant, but did not shew the Warrant, nor had it in his hand, nor told him at whose Suit, and that the Defendant rescued him from the Waplifts, and he escaped; after some reasons, it was adjudged for the Plaintiff. vid. 16 Ed. 3. 4.

S E C T. VI.

Case 1:

Inn-keeper.
per.

In the Case of Calyes. Co. 8. 32. It was resolved, That to maintain an Action against an Inn-keeper for goods lost, &c. It ought to be 1. a Common Inn. 2. He ought to be a Passenger, not a Neighbour only. 3. An Inn-holder shall not answer for anything but that which is infra Hospitum; therefore if a passenger require that his horse be put to grass, the Inn-holder shall not answer if he be stolen, otherwise if he require it not. 4. There ought to be default in the Inn-holders, or his servants; Therefore if a Guest bring one with him who stealeth the goods, the Inn-holder shall not be charged; otherwise if the Host appoint one in his Chamber with him, who doth it: But an Inn-holder shall not be charged, if he require the Guest to put his goods in a Chamber, and he leaves

leaves them in the Court: But it is no excuse to the Innholder that he delivered the Key of the Chamber to the Guest, or that no goods were delivered to him. 5. The Host shall answer for Characters if they be stolen; but not if a Guest be beaten, or any wrong done to his person.

Cooke and Yonger. Co. B. Croo. 1. 11. The Count was, That whereas the Office of the Under-Stewardship of the Courts of the Pannors of, &c. was antiently grantable for life, with a Fee of Three pound six Shillings eight pence, and the Bishop of Glouc. did grant the same to the Plaintiff for life, with the same Fee of, &c. payable yearly at two Feasts, issuing out of the said Pannors, the Bishop dyed, and the Plaintiff is ready to keep Court, &c. and the Defendant disturbed him: found for the Plaintiff, moved in arrest, 1. Because the prescription is so much a year, and here the payment appointed at two Feasts, and so not warranted by the Statute. 2. That the Office is grantable for life, and shews not for whose life; but these not allowed; for the dayes of payment are not material, where the ancient Rent is reserved yearly, Croo. 6. 37. And the grant for life shall be intended for the life of the Grantor: But it was adjudged for the Plaintiff.

Case 2.

Disturbance in an Office.

Eastcourt and Cope. Pasch. 18 Jac. B. R. In an Action of the Case it was thus, A. sued B. and set forth that he was a Mason, and had a Lease for years of a Quarry, and did use to sell Stones, and that B. did so threaten to sue, beat, or maim his workmen, and those that came to buy, that none would buy, or work there: And it was adjudged that the Action did well lie for threats of Suit, and threats of blows, without Ass, Croo. 2. part. 567.

Case 3.

White

Case 4.

many causes of actions in one suit.

White and Ridsen. Mich. 1 Car. 1. Co. B. The Plaintiff lent the Defendant his Horse to Oxford from L. and there to be safe delivered, &c. The Defendant did mis-use his Horse, and he demanded him of the Defendant at Oxford, and he refused, but converted him to his own use: After Issue, and Verdict for the Plaintiff, it was moved to arrest Judgement, for that so many wrongs were put in one Declaration, and because the damages were entire: But resolved the Tryal good, and the damages well assessed, Croo. 1. 14.

Case 5.

Keeping a Dog used to bite

Kinnion and Davis. Mich. 13 Car. 1. B. R. Error in Action on the Case pro eo quod defend. quendam Canem ad mordend. Oves consuer. apud Hinton scienter retinuit & custod. qui quid Canis, &c. Court held (Absent Brampton) the Declaration nought, for that it did not shew quod sciens Canum predict. ad mordend. Oves consuer. scien. retinuit, Judgement reversed, unless, &c. Croo. 1. 350.

Case 6.

For abuse of a thing borrowed

Rigg and Clark. Mich. 32, and 33 Eliz. B. R. Error of a Judgement in an Action upon the case, where Clark did declare, that where he was possessed of a Gelding, in consideration that he would lend his Gelding to B. to carry three bushels of Coals from Ware to the house of B. he promised he would not aliter eum onerare, and shews that B. aliter per uram predict. onerabat spadonem predict. & magis ponderosius onus super spadonem predictum imposuit, &c. And Judgement was given, and Error brought, that aliter onerabat. without shewing how, was not sufficient: And for this cause Judgement was reversed, Croo. 1. last publisht. 194.

Case 7.

The Countess of Salop and Crompton M. 42 Eliz. B. R. Action upon the Case. The case was this, That a Lessee at will of a House tam negligenter

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ter & improvide kept his fire in the House, that
througħ his default therein, the same was burnt,
and for this the Lessee brings his Action; and
therein it was held by the whole Court, that for a
negligent burning, neither this, nor any other Acti-
on did lie: But for cutting down Trees, or any
voluntary Trespass, there an Action of Trespass
lieth; As it doth for a voluntary spoil of my sheep
by my Shepherd, or of my goods by my Bailiff:
But in case of breach of confidence, by such a neg-
lect in my servant, as where the Shepherd suffers
his sheep to be lost, or thabby, or the like, there for
this this Action will lie. And yet in that case two
Judgements were said to be given, that this Action
upon the case will lie in a case where the Lease for
life or years, doth make the Lease at Will, and the
Tenant at will shall make the waste, and thereby
the Tenant for life, or years is questioned, and
damniſſied by an Action of waste: But in the prin-
cipal case Judgement was given against the Plain-
tiff, Croo. 1. last publisht. 777. 784. See it Croo. 5.
13.

Adams and Laycon. 1 Car. Action upon the case, **Case 8.**
for that the Defendant did threaten the servants of
the Plaintiff, which were cutting of Trees for
Iron-works, &c. to beat and murder them, and to
bring suits, so that they did refuse to work, and the
Master lost his servant: At Tryal the Jury found
only the threatening with suits, and Judgement
was given for the Plaintiff, albeif motion was to ar-
rest it, Per Curiam. M. 1 Car. 1 Bendl. 157.

Threat-
ning of
Servants
that they
depart
from their
work, &c.

Bowlton and Banks. Ver. 8 Car. 1. B. R. Action **Case 9.**
upon the Case; where the Defendant kept a Bailiff,
sciens that he was affuctus ad mordendum Porcos,
and that the Plaintiff was posselt of a Sow great
with

with Piggs, that the Plaintiff bit the Sow; so that she dyed of the biting: Adjudged for the Plaintiff, Croo. 1. 184.

Case 10.

Monopoly,
Action
grounded
upon
it.

Edward Darcy, Thomas Allion. Trin. 44 Eliz. The Case of Monopolies, Action upon the Case; he declared upon a Patent granted by the Queen to Edward Darcy for the sole Trade of playing Cards, That he, and such as he appointes onely, should have power and license to fetch in from foreign parts, make, buy, and sell them: And thereby did inhibit to all others the use and exercise of that Trade of making, and sale of playing Cards: And shewed that the Defendant had taken upon him to use and exercise the said Trade, &c. To which Declaration the Defendant demurred in Law: And it was adjudged against the Plaintiff. See the Case, the Arguments and Reasons thereof, Coe. 11. 84. and Noys Rep. 173, 174, &c.

Case 11.

For a false
Return
and Oath.

Coe. 12. 128. In an Action upon the case; It was resolved by the whole Court, That if a Sumner return one summoned in a Court Christian upon his Oath, where in truth he was not, and thereby he is pronounced Contumax, and after he is excommunicate; he may have this Action upon the case; for although the proceeding be Ecclesiastical, yet the damage is tempozal: And there it was resolved, that for a false Oath in a Court of Justice, whereby any special damage comes to another man, he may have this Action: As if one to be a pledge swear he can spend Forty Shillings per Annum, or where by any special Affidavit, I am molested. F.N. B. 109. 27 H. 6. 230 And that though the matter be merely Ecclesiastical, yet if the party grieved hath damages, either by any wrongful proceedings of the Judge, or Dil-seasance, or Non-seasance,

or falsity of any Minister, or by unjust prosecution of the party, the party grieved may have an Action upon the case, and recover his damages: And there Doct. and Stud. 118, 119. was agreed. Action upon the Case against the Ordinary for a wrongful Excommunication touching any thing out of his Jurisdiction; and 47 H. 6. 8. Fitz. Herbert. If an Arch-deacon refuse to induct a Clerk, &c. he shall have this Action, to which all the Court agreed, with which agrees 26 H. 8. 3. So F. N. B. 92. If one proceed against a prohibition, the party may have an Action of the case against him: So if a Bishop Excommunicate after prohibition; or in case where he doth it against Law: So where one had sued to Rome.

Wimberly and Thompson. In Action upon the Case 12. upon the Case; That the Plaintiff was possessed of a Fountain of silver; to the value of four hundred pound, and delivers it to one to transport over Sea, and sell it: And in the account it appears, that the Factor afterwards melted the Fountain, and converteth it to his own use; for which the Plaintiff brought his Action of the Case, and they were at Issue, and it was alledged, that where in truth he was damaged to the value of four hundred pound, yet there made Oath that it was but of the value of two hundred pound: And for this Oath it was adjudged no Action would lie. Noy. 6. For an Oath Perjury.

Estcot and Lauren. B. R. Trin. 36 Eliz. Action Case 13. upon the Case; The Plaintiff shewed, that the Lord Berkeley, by his Indenture demisit & ad firmam tradidit totam firmam suam tolnetum & proficium Nundinarum & dierum ferialium infra Manerium & Burgum de Therbury, for one and twenty years; and that the Defendant had disturbed and hindered him Disturbing one in his Fair

him from taking of divers pices of *Will* infra
Manerium & Burgum predictum: And Judgment
 was given for the Plaintiff, and the Declaration
 admitted to be good. *Owens Rep.* 109.

Case 14.

Parson
 not taking
 away his
 Tithe in
 time con-
 venient,

A Paritioner brought an Action against one,
 being Parson of *L.* and declared, that he at the Pa-
 rish of *L.* had laid out the Parson fifteen Charies for
 his Tithes, and the Defendant suffered them to
 remain in the house of the Plaintiff for such a time,
 and did not take them away, to his damage, &c. in
 this Case it was said, that when an occupier of
 Land sets forth his Tithes, the property is altered;
 and as in the Parson; and then if he suffer it to
 remain upon the Lands of the Paritioner, an Action
 of the Case lyeth against the Parson for it. *Pasch.*
20. Jac. B. R. Wiseman and Denhams Case. Leys.
Rep. 69. See Case 37. infra. out of *Latch. Rep.* 18.

Case 15.

For neg-
 ligence a-
 bout fire:
 action a-
 gainst
 Husband
 and Wife:

Shelly brought an action of the Case against Burre,
 and his Wife, that adeo negligenter & improvide
 custodierunt ignem suum, that the house of the
 Plaintiff was burnt: Verdict for the Plaintiff, mo-
 tion to arrest Judgment: For that a woman covert
 neither sues nor is sued: And it was said that upon
 this special custome of the Realm, the Action is to
 be brought against the Husband, and not against
 the Wife nor Servant. As in the Case of an Host-
 ler, that loseth my goods: But the case being new,
 the Court would advise, *Bendloes.* 153.

Case 16.

Inn-kee-
 per for
 goods lost

Harbert, a Carrier, brought an Action upon the
 case against Lane, an Inn-keeper, for goods lost out
 of the Inn. *Pasch.* 1653. *B. R. Mz. Packs full of*
Linnen Cloth, and other goods, and after a Verdict
 for the Plaintiff; it was moved in arrest of Judge-
 ment for that it was not said what Cloth, or of
 what value was in the Packs, and so the Declara-

tion

tion uncertain. But Rolls, Chief Justice, the Declaration is good, after Heriot, Stiles Rep. 370.

Clerk. H. 44 Eliz. C. B. Action upon the Case, Case 17. for, that one I. S. being out-lawed at the Plaintiffs suit, and a Capias utlagatum awarded against him, directed to the Defendant, Sheriff of the County of Bucks, returnable at such a day, &c. and because he did not return the Writ, the Action was brought, and Judgement against the Defendant, by non sum informatus; and upon a Writ of Inquiry of damages, damages found to Forty pound: And now Williams moved in arrest of Judgement, that an Action lies for not returning of the Writ: But he should be onely amerced for his contempt. And of that opinion were Walmesley and Warberton, for in not returning this Writ, the Queens command is neglected, which she ought to punish. But by Walmesley, if the party who sues that Writ, shews to the Sheriff, the party, who is to be arrested, and delivers unto him the Writ, requiring him to make the arrest: If he doth it not, an Action upon the case lies against him: But here, non constat whether the party was arrested, or that the Sheriff could find him; wherefore, &c. Kinsmil, although the Queen may punish the contempt, yet the party having loss by not returning of the Writ, may have his *Allo also*: And the Clerks said, there were many Precedents, that such Actions have been brought: wherefore absente Anderson, adjournatur, Croo. 1. part last publisht. 873.

Colston, and Rosse, and Lever. T. 44. Eliz. B. R. Case 18. Action of the Case against the Defendants, late Sheriffs of York, for, that, whereas according to the Custome of the City of York, he levied a Plaint of Debt of fifteen pound against one Leyton, before the

said Sheriffs in the Court of Guild-Hall, according to the custome there; and thereupon had Summons awarded returnable at the next Court there, which was returned Nihil, and afterwards had a Capias awarded returnable at the next Court, before the aforesaid Ross and Leveret. At which Court such a day holden, the Serjeant returned capi Corpus, & Paratum habuit, &c. At which Court holden before the said Rosse and Leveret, then Sheriffs, the said Leyton was committed unto the Queens Gaol, under the Custody of the said Defendants, there to remain until he satisfied the Debt, or the Plaintiff sit inde præclusus; whereupon he there remained 17 Jan. 43. Plaintiff usque 18 Jan. 43. at which day the Defendants suffered him to go at large, the Plaintiff not being satisfied his debt, and so went into places unknown, whereby he is deprived of his debt, unde Actio accrevit, the Defendants plead that they let him at large by reason of a writ of privilege awarded by the Council of York, &c. And it was thereupon demurred, because they did not allege the authority of the Council there, &c. And it appears not to the Court, that he might be privileged there; for it doth not appear, that they had authority to hold a Plea in Debt, so as the Plaintiff might have Justice there, and for that, and other causes, it was held that the Writ was not good, and that the Sheriffs, although they let him at large by colour of the Writ of Privilege, yet the Writ being not a good Warrant, they are responsible to the Plaintiff; for they, at their peril, are to take heed what warrant they had to let him out of their custody: But then divers exceptions were taken to the Declaration by Cook, the Attorney General; first, because a Capias is awarded

warded returnable at the next Court, which ought not to be so, but there ought to be a day certain of the Return, sed non allocatur, for the Writs at the most is but erronious, whereof the Sheriffs shall not take advantage: And the Plaintiff is to declare according to the Record, and he cannot vary from it. Secondly, because the Capias is awarded returnable before Rosse and Levet, which is not good, for it may be they should dye, or be removed before the Writ returned; and therefore it ought to have been awarded returnable before the Sheriffs, without naming their proper names, as of Writs awarded of this Court or Common Bench, are alwayes returnable before the Justices of the Common Bench, without their proper names, for the reasons before: But all the Justices said, it was well enough notwithstanding, when it appears that they were Sheriffs at the time of the Return, as it appears here by the Record that they were: So, although a Writ awarded to the Sheriffs, without their proper names is the surest way, for that it may be he may be removed before the executing thereof, but if it be awarded unto him by his proper name, and he be Sheriff at the time of the executing, and return thereof, it is well enough: So of Writs awarded out of this Court returnable before the Justices by their proper names, it is well enough in Law, although not so in policy, for the reason above said. Thirdly, Because it is not allowed, that the said Leyton was arrested, and if he were not arrested, there cannot any Action be brought for his escape, sed non allocatur, for, when the Defendants returned cepi corpus & paratum habent, it is to be intended that he is intended to be arrested, yet the Record is, that he is com-

mitted per curiam to prison, which is sufficient, the party being present in Court, without an arrest. Fourthly, The Commitment is, ibidem remansurus quosque the debt be satisfied, or the Plaintiff barred, which is not a lawful commitment; for then he should not be Bailed, which is against Law, and the Course of all Courts. But the Court held it to be well enough, for that it is the manner of Commitments in all Courts; for the Court is not to demand Bail, but yet if he can finde Sureties, he shall be bailed, for it is so intended in the Commitment; wherefore notwithstanding these Exceptions it was adjudged for the Plaintiff. Croo. 1. last published. 893.

Case 19.

Disturbance in
an Office.

Harvey and Newlyn. M. 43 Eliz. B. C. Action upon the Case; whereas Sir James Allington was seized in fee of the Manor of Milbourn, and of another Manor, and granted to the Plaintiff by deed, to be his Bailiff of the said Manor, for his life, and that the Defendant had disturbed him in the said Office, viz. in his collecting of Rents, viz. of the Rents of S. and D. &c. The Defendant confesseth the Heir of Sir James Allington, and his grant to the Plaintiff, but that afterwards he sold the said Manors to I. S. who appointed the Defendant to be Bailiff there, whereupon he collected the Rents, &c. And it was thereupon demurred, and all the Court were of opinion, that the purchase of the Manors might discharge the Plaintiff, and revoke that Grant, although it were for life; because he sheweth not, that there was any fee granted for the Execution thereof, nor that he had any other profits by exercising of it; for without profit it is but an Office of trouble, and then the Plaintiff hath not any cause to complain, when he hath not any loss:

But

But if he were to have had a fee, or other profit in certain for executing thereof, it had been otherwise; wherefore it was adjudged for the Defendant, Croo. 1. last publisht. 859.

Kenton and Wallinger. T. 43 Eliz. B. R. Action upon the Case; whereas sentence of Excommunication was against one Harris, the instrument whereof was delivered to the Defendant, being Curate of the Parish, where the said Harris, and Plaintiff inhabited, to publish in the Church, that he maliciously had razed out the name of Harris, and put in the Plaintiffs name, and read it in the Church, whereupon he was enforced to be absent from Divine Service, and to bear the expence, to procure a discharge for himself. The Defendant pleaded not guilty, and found against him: And it was moved in arrest of Judgement, that an Action lay not for this matter; for it is Spiritual, whereof the Temporal Law takes not any regard: But the whole Court resolved, that the Action was maintainable; for, although the Excommunication be Spiritual, and so is the denouncing thereof, yet the razing and alteration thereof, is merely Temporal, for which an Action well lieth at the Common Law; wherefore it was adjudged for the Plaintiff, Croo. 1. last publisht. 838.

Case 20.

Rasure and Forgety,

Waldo and Lambert. H. 44 Eliz. B. R. Action upon the Case against the Defendant, Sheriff of Southampton, for that, whereas the Plaintiff had sued a Latitat against one Arthur Lake, who was indebted unto him in such a sum by Bond, to the intent that he being arrested, and having put in bail according to the course of the Court, he might declare against him for that debt; and that this Writ being delivered to the Defendant, being

Case 21.

Sherif of the County of Southampton, for that intent, and he arrested him, and afterwards at Westminster, in the County of Middlesex, suffered the said Lake to escape: The Defendant pleads, that he arrested him, according as the Plaintiff hath declared: But that afterwards, in the same County, he rescued himself there per gentes de County, absque hoc, that he suffered him to escape at Westminster: And it was hereupon demurred, and adjudged to be no Plea: for the Sherif at his peril ought to keep his prisoner, and may take sufficient power of his County to arrest any one upon mean Process: And although it was allowed a good Return here, and Process shall be awarded against the Rescuers to punish them, yet that is no answer in an Action brought against him for such an escape: Also the traversing of the place of the escape is not good; for he cannot by the traverse make the place material; wherefore it was adjudged for the Plaintiff, Nota, H. 14 Jacobi Mays Case adjudged, that where the Sherif returneth Rescous upon a mean Process, this is a good Plea in an Action upon the case, Cro. 1. last publisht. 868.

Case 22.

Seyman and Gresham. M. 44 Eliz. B. R. Action upon the case, supposing that one G. Berisford was indebted unto him by a Dr. Staple in Two hundred pounds, and that he sued Execution, and that the Sheriffs of London, by force of that Writ, impannell'd a Jury to enquire what goods, &c. and that there were divers goods of the said G. Berisford in such an house in London: And that the Sherif came with the said Jury, to have a view of them, and to appraise, and seize them for this debt, and that the Defendant, præmissorum non ignarus, shut the door, and disturbed him to make Execution, &c.

The

The Defendant entitles himself to the possession of the house, by reason of a Joynt-Lease made unto him, and one G. Berisford, and that he had it by Survivorship, and that he shut the dooz for the salvation of his possession: The Plaintiff replies, For hindring the course of Justice in the Sheriffs Execution of his Office. that the said G. Berisford mentioned in the War, and he who was obliged in the Statute, were all one person; And it was thereupon demurred. The principal question was, Whether this shutting of the dooz was a disturbance of the Execution; And whether the Plaintiff might thereupon maintain this Action: And first, it was agreed by the whole Court, that upon a Capias ad satisfaciendum, the Sherif may not break open any mans house, to make Execution, but he is punishable for doing it; But upon a Capias utlagatum he may well enter any mans house to apprehend him; for no place ought to protect him against the Queen; and he being out of the Law, shall not have the protection of the Law; And this case, Tanfield said, was resolved by all the Justices of the C. B. in Sir Thomas Keimes Case. But whether he might upon a fieri facias, or extendi fac. enter the house of any to take Execution of the goods, and to break the parties house to make Execution, they doubted. Vid. 18 Ed. 2. Execution. 250. 13 Ed. 4. 9. 18 Ed. 4. 4. But if the dooz be open, there is no doubt; but that the Sherif might enter to do Execution; for the Law gives him authority thereto, as an Executioner may enter to take goods left there by the Testator. And for this cause Gawdy and Popham held, that the Action here well lay, because by this shutting of the dooz, the party was disturbed to have his Execution; but Fenner and Yelverton e contra, for the goods being in the Defendants house, who

is a stranger to the Execution, he is not bound to take Conscience of the Sheriffs intent, in coming to make Execution, and his cutting the door was lawful: And although there were loss to the Plaintiff, yet it is *damnum sine injuria*: And it appears not by what means that the goods of the Conusors, which are in the Defendants house, came thither, and if they were taken by the Defendant, as a Trespassor, the party, whose goods they are, or the Sheriff upon Execution may come within the house, if the door be open, to seize them, because the Defendant had them by unlawful means: But if the Defendant hath taken them by lawful means, viz. by bailment, or otherwise, neither the party himself, nor the Sheriff can come within the house to seize them: And therefore the shutting of the door is no cause of Action for the Plaintiff, and therefore the Action lieth not, &c. Et adjournatur. Note, that afterwards M. 2 Jacobi this Case was argued again: And then Williams agreed with the opinion of Yelverton and Ompibus; and that the Sheriff might not break any mans house to take Execution, unless in the Queens case, or for a contempt, &c. wherefore according to their opinion it was adjudged for the Defendant. Croo 1. last published 908.

Case 23.

For disturbing a man in his Fair, &c.

Dent and Oliver. M. 2 Jacobi. B R. Action for the Case, supposing that he was seized in Fee of the Mannor of Hallington, and of a Fair to be held there every Ascension day: And that the Defendant disturbed him to take Toll, &c. The Defendant pleaded not guilty, and found against him; and now moved in arrest of Judgment, that the Declaration was not good, because he doth not shew a Title to the Fair by grant, sed non allocatur, because it is but a conveyance to the Action, and it is not any

any claim thereof, as to the Right, as in a quo warranto; and therefore the Declaration without special Title comprized therein, is good; wherefore it was adjudged for the Plaintiff. Croo. 2. part 43.

Blyth and Thopham. P. 5 Jacobi. B. R. Action Case 24.
upon the Case, for that he digged a pit in such a Common, by occasion whereof, his Mare being straying there, fell into the said Pit, and perished; the Defendant pleaded Not guilty; and found for him: And notwithstanding the Plaintiff, to save costs, moved in arrest of Judgment upon the Verdict, that the Declaration was not good; for when the Mare was straying, and he shews not any right why his Mare should be in the said Common, the digging of the Pit is lawful as against him; and although his Mare fell therein, he hath not any remedy; for it is damnnum absque injuria; wherefore an Action lies not by him, And of that opinion was the whole Court; wherefore it was adjudged upon the Declaration, that the Bill should abate, and not upon the Verdict. Croo. 2. part 43.

For digging a Pit in a Common, by which another mans beast is hurt.

Rich and Kneeland. 11 Jac B. R. Action upon the Case; whereas the Defendant was a Common Wargeman, and used to carry for hire from London to Milton, and other places in Kent, that he delivered unto him a Postchaise, and thirty pound therein to carry, and gave unto him two pence for the carriage; and that the Defendant tam negligenter custodit, that it was taken from him by persons unknown, and so he lost it: The Defendant pleads (confessing the receipt) that he was a Common Wargeman, but that he fearing to carry it, delivered it to I. D. to carry, and that he gave notice thereof to the Plaintiff, and he agreed thereto,

Case 25.

Against a
Carrier,
for losing
of a mans
goods.

to, and discharged him of the carriage; the Plaintiff traverses that he did not discharge him; and it was thereupon demurred, and adjudged for the Plaintiff; for the delivery by this Assent is not material, but the onely matter traversable is the discharge, which is issuable, and found for the Plaintiff: An Error being brought, was assigned; first, because this Action lies not against a Common Warge-man, without special promise: But all the Justices and Barons held, that it well lies, as against a Common Carrier upon the Land, Secondly, they held, that the Traverse is good; wherefore the Judgement was affirmed, Croo. 2. part 330.

Case 26.

Ford and Hoskins. P. 13 Jac. B. R. Action upon the case, against the Defendant, being Lord of the Mannor of Beauminster, in the County of Dorset, whereas Jo. Ford was Coppy-holder for life of the said Mannor (where the custome of the Mannor is, that a Coppy-holder for life may nominate his Successor to have it for life; and that such a person nominated should compound with the Lord for his Fine; and if he could not compound, then he should give such a Fine as the Homage of the Mannor should assess, and should be admitted, and hold for his life) and alledgeth in fact, that his Father nominated him his Successor to the said Coppyhold, to have it for life, and dyed, and that he tendered his composition, and could not be accepted; whereupon the Homage assessed a Fine of Forty shillings, which he offered to pay, and the Defendant would not accept thereof, nor admit him, whereby he lost the benefit of the said Coppyhold, nor could sell it; and thereupon he brought the Action: The Defendant pleaded not guilty, and found against him; and it was now moved in ar-

By a Coppy-holder
against a
Lord for
not admission
of him.

rest

rest of Judgement, that this Action lies not; for, although it hath been alledged, that this custome pretended, is good; yet for as much as he who is so nominated, hath not *jus ad rem*, nec *jus in re*, until admittance; and a Coppy-holder, in the eye of the Law, is but Tenant at the Lords will, and if the Lord will not hold Court, he hath no remedy to compel him to admit him, but by order of Chancery, Cro. 1. 4. f. 28. Westwicks case. 32 H. 6. 3. Lit. f. 3. The Court held, that the Action lay not, for he hath not any interest therein; and it would be infinite if every Coppy-holder, upon pretence of refusal, should have an Action; for then the Lord at his peril ought to admit, which would be mischievous. And there never was any Action brought before these times against a Lord of a Mannor, for non-admittance, but alwayes the remedy against the Lord was onely in Chancery: wherefore there is not any reason to give allowance to such framed Actions, newly devised; It was therefore adjudged for the Defendant, Cro. 2. part 368.

Case 27.

Garret and Taylor. P. 18 Jac. B. R. Action upon the Case; whereas he was a Free Mason, and used to sell Stones, and to make Stone-buildings, and was possessed of a Lease for divers years to come, of a Stone-pit in Hedlington, in the Countie of Oxon, and digged divers Stones there, as well to sell, as to build withall, that the Defendant, to discredit, and to deprive him of the commodity of the said Mine, imposed so many, and so great charges upon his workmen, and disturbed all comers, threatening to maim, and vex them with Sutes, if they bought any Stones; whereupon they all desisted from buying, and the others from working, &c. After Judgement by nihil dicit for the Plaintiff, and damages

For disturbing a mans servants in his work.

images found by Inquisition to Fifteen pound; it was moved in arrest of Judgement, that this Action lay not; for nothing is alledged but onely words, and no act nor insult; And causeless Suits for fear are no cause of Action, sed non allocatur, for the threating of Pain, and Suits, whereby they durst not work, or buy, is a great damage to the Plaintiff; And his losing the benefit of his Quarries is a good cause of Action; and although it be not shewn how he was possessed for years, by what title, &c. yet that being but a conveyance to this Action, was held to be well enough; and adjudged for the Plaintiff, Croo 2. part 567.

Case 28. Hodges and Robert Marks, &c. T. 16 Jac. B. R. Action upon the Case; whereas William Pawly Senior, and William Pawly Junior, were indebted unto him by several Bonds in Five and thirty pound, and to obtain this debt, he procured a Latitat out of the Kings Bench, directed to the Sherif of Somerset; to arrest them, and shews the course of the Court, that upon appearance Bail shall be put in; whereupon he declares, &c. And that the Sherif made a Warrant to Phillip Perry, and others, to arrest them, who by virtue thereof arrested William Pawly Junior, that the Defendants rescued him, whereby he escaped, and went to places unknown, so as he lost his Suit, &c. The Defendants pleaded not guilty, and a special Verdict found this matter, viz. the debt due to the Plaintiff, the prosecuting of the Latitat for this cause, the making of the Warrant thereupon to the Sherifs, &c. And further they find that the said William Pawly was also indebted to Phillip Perry Senior, and that he sued a Latitat against him, who made also a Warrant to the same Bailif, to arrest him at

at the Suit of the said Phillip Perry Senior, that it was directed to them conjunction & division, that they were not known Bailiffs, that upon 8 Jan. 12 Jac. in the night about six of the clock, they entered into the House of Robert Marks Senior, the door being open, and W. Pawly being there present, the said Phillip Perry Junior laid his hands on him, and then having both the Warrants in his pocket, said unto him, here I do arrest you by virtue of a Warrant that I have, but he did not shew unto him the Warrant, nor had it in his hand, nor told him at whose Suit he arrested him, and that William Pawly did not demand to see the Warrant, nor at whose Suit he was arrested, and that the Defendants rescued him from the Bailiffs, and he escaped, & si super totam materiam, &c. And it was first resolved, that this arrest, without shewing the Warrant, and without telling at whose Suit, until the other demanded, was legal, and well enough, and that he needed not shew the Warrant till the other obeyed, and demanded it. Vid. Co. l. 3. f. 68. in Mackalleys Case, & l. 6. f. 54. Countess of Rutlands case. Secondly, that this arrest in the House, the door being open, and at six of the clock at night, was good enough against the party arrested, and the rescuing him was utterly unlawful. Thirdly, that this arrest, without having the Warrant in his hand, and having both Warrants about him, was well enough, although he did not shew by which of the Warrants he arrested him; for he being under the Bailiffs arrest, in custody there, for all causes for which the Sheriff had made his Warrants against him, although the Sheriff or Bailiff do not mention any specialty. Vid. Co. l. 3. f. 81. Garnons case, and f. 89. Frosts case. Fourthly,

Rescue of
a Prisoner.

ly, it was held, that for this reason, the Plaintiff, at whose Suit the arrest was, may maintain an Action very well; for he hath the loss, and cannot have his Action against the Sheriff; and therefore it is reason he should have his Action against those who did the injury to him, whereby he lost his process, and his means to recover his debt, as it was lately here adjudged in the Case of May and Proby, whereupon it was adjudged for the Plaintiff, Croo. 2. part 485.

Case 29.

Nuisance
special in
a high
way.

Fowler and Sanders. M. 15 Jac. B. R. Action upon the Case, for laying in the high way in Cogshall to Brayntree divers loads of Loggs, whereby they much straitened the high way, so as the Plaintiff upon the evening of such a day, riding on the said way, his horse stumbled upon those blocks, and much hurt him, for which &c. The Defendant confess it to be the high way, but he saith, that the Town of Cogshall is an ancient Village, wherein all the inhabitants there, having ancient houses, used there, whereof &c. to lay loggs in wast places of the said way before their doors for their fuel, leaving sufficient passage for Chariots, horse-men and foot-men, and that he was seized in fee of an ancient house, and laid loggs for his fuel in wast places of the high way leaving sufficient for passage of Chariot, horse-men and foot-men, &c. And if the Plaintiff riding by the high way, improvide turned his horse upon the blocks, and fell, &c. whereupon the Plaintiff demurred, and without much argument it was adjudged; First, that the Action well lay for the Plaintiff, because he having special damage, had cause to bring that Action, although the Nuisance be a publick Nuisance. Secondly, that the prescription to make a Nuisance

is

is not good, for it is against Law to prescribe in such a manner. Thirdly, this prescription for the Inhabitants is not good; wherefore it was adjudged accordingly. Croo. 2. part 446. Coe. 5. 73. 27. H. 2. 27.

Watson and Norburies Case. H. 20 Cat. 1. B. R. Case 30.
Action upon the Case was brought against the Defendant, for procuring a Commission of Bankrupts to be sued out against him, by virtue of which he broke open his shop, took away his goods, and shop-stocks, which he was discredited in his Trade; the Defendant pleaded, that the Plaintiff had before this brought his Action of Trespals for this, and recovered damages, &c. and that a Recovery in one personal Action, is a Barre in all personal Actions for the same thing. In this Action it was resolved, that the Action was maintainable, and that the Plaintiff may bring which of these he will, and which of them first he pleaseth, that the breaking open his shop, &c. in this Action was mentioned only by way of inducement &c. Stiles 354.

Causing Commission of Bankrupts to be sued out against a man.

Harbin and his Wife against Green. Trin. 14 Jac. Rotulo 2263. In an Action upon the Case brought for not grinding his Corn at the Plaintiffs Mill, and shews, that the Bishop of Salisbury was seized of four Customary Mills, called A. in his demesne; as in fee of right of his Bishoprick, were, time out of mind, used, and ought to grind all their Corn whatsoever spent in their Houses, or exposed to sale in the said City, at the said Mills of the said Bishop, and no where else, without the license of the said Bishop, and to pay Toll therefore to the said Bishop, his successors Bishops, or their Farmers for the time being, and in consideration thereof the Bishop, his successors or Farmers,

Case 31.
For not grinding at the Plaintiffs Mill.

mers, for the time being of the said Mills, time out of mind, have been used and accustomed at their own charges, from time to time to keep and maintain a servant expert in grinding, as well by night as day there attending, to grinde their corn as slow as conveniently might be; and the Plaintiff shews that such a day the Defendant was, and yet is, an Inhabitant in one ancient Messuage, in the said City, held of the said Bishop, and he possessed, intending to deprive the Plaintiff of the profit of his Mill, did such a day grind divers sorts of Corn in other Mills, without the Bishops leave, to his damage of, &c. The Defendant pleads Non Cull, the Jury find the Defendant guilty for a longer time, than the Plaintiff had interest in the Mill, and gave damages entire; and upon a motion in arrest of Judgement, adjudged naught.

Case 32.

For not
grinding
at his mill.

Kemp and Gord. Trin. 1654. B. R. An Action of the Case was brought by the Mayor and Commonalty of the Town of Liscard in Cornwell against Gord; for not grinding at their Common Mill, Defendant demurs to the Declaration, because the Custom is not alledged upon which the Action is grounded; but Judgement was given for the Plaintiff, Stiles Rep. pl. 421.

Case 33.

Monopoly

Sims and Wilson. Pasch. 1649. B. R. The Plaintiff brought an Action upon the Case upon the Statute of Monopoly against the Defendant; the Defendant pleaded the Statute of Limitation of Actions in Bar of the Action, the Plaintiff demurred, and moved, that it was not within that Statute, because not an Action upon the case at the Common Law, but an Action upon the Case grounded upon the Statute of Monopolies. But it was answered it was an offence at Common Law, yet adjourned

adjourned for the time till next Term, Stiles Rep. 214.

Drope and Thair. Trin. 1. Car. 1. The Waster in Case 34. this Action shews, Consuetudo Regni, was, that Hosts should keep the Goods of their Guests, ubi hujusmodi hospitu tenentur transcentes, and shewed, that one Rowly, his Servant lodged in the Inn, the Servant being a Common Hostler, and had such goods of his Masters with him, which by negligence, &c. were stoln; Verdict and Judgement was for the Plaintiff, albeit it was moved, that it is not said, the Servant was transient, viz. travelling, Latch, Rep. 126, 127.

Against an Inn-keeper.

Tutter against the Inhabitants of Dacorne, upon the Statute of Hue and Cry, alledging the Robbery to be committed at S. and R. in divisis Hundredorum de D. & C. And that he made Hue and Cry, and gave notice of the Robbery at Southmins within the County of Midd. near the Hundreds aforesaid, and shewed all other circumstances according to the Statutes, the Defendants plead not guilty, and found against them: motion to arrest the Judgement; for he alledgeth the Notice to be at Southmins, within the County of M. which is another County from that where the Robbery was done, and doth not say prope locum ubi Robberia facta fuit, but prope Hundredum, which may be Ten miles from the place where the Robbery was done; and it was adjudged good, and for the Plaintiff, Crook. 1. 29, 30.

Case 35. Against a Hundred upon a Robbery.

Long and Bennet. 23 Car. 1. B. R. Stile. P. 19. Long brings an Action upon the Case against Bennet, and declares, that he would not suffer him to take unum Acrum Ligni, which he had sold to him in such a place; after a Verdict for the Plaintiff,

Case 36. Pleading,

it was moved in arrest of Judgement, that the Declaration ought to have been *unum Acrum Bosci*, and not *Ligni*, for that was uncertain: The Court said, they would advise of the Exception, because it was an Action of the Case: the same Term Judgement was given, because damages onely were to be recovered, and the words used were but inducements to describe the thing for which damages onely were demanded, yet it might have been more properly expressed.

Case 3. *Stilman and Chanor. Hill. 1 Car. 1. B. R.* Upon the Statute of 2 Ed. 6. chap. 13. For setting out *Tithe*, the Case was, *Cozn* was set out for *Tithe*, and the owner of the Land doth take the *Cozn* damage-feasant; but in the Declaration doth not shew how long the *Cozn* did remain upon the Land, and per Curiam it is not good, for it doth not appear to be any damage to the owner of the Land, for that it is not shewed how long it was upon the Land; and the usual course in such Cases, is, If *Tithe* be set out, and the Parson doth not take it in due time, the party may have an Action upon the Case. And per Curiam one may not distrain Hocks of *Cozn*, but he may distrain a Hack damage-feasant: Also after the *Tithe* is once set out clearly, the Parson by the Statute may have an Action of Trespass against him that shall take it away: And yet if a meer stranger set out *Tithes*, this will not settle any property in the Parson, so that the Parson may have an Action for the taking of it away, *Latch. Rep. 8.* See before Case 14. out of *Leys Rep. 69.*

For *Tithe* not taken away in time convenient after it set forth.

F I N I S.



*An Alphabetical Table of the names of the Cases con-
tained in the last Chapter of the Book.*

A

A Gton and Simon, sect. 1. case 33
 Adams and Lacon, sect. 6. case 8
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FINIS.

PH

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